Commonwealth National Competition Policy

Annual Report

1998-99

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Introduction

The Significance of Competition Policy for Australia

Continuing improvement in the living standards of Australians is dependent on the productivity performance of the economy. Increasing national productivity will, over the long term, boost economic growth, employment opportunities, export competitiveness and real household income. This, in turn, will influence our capacity as a society to provide essential services to the community.

The Productivity Commission (PC) has recently concluded that Australia's productivity performance has improved markedly in the 1990s. Multifactor productivity (that is, combined labour and capital productivity) grew 2.4 per cent per annum from 1993-94 to 1997-98, compared to an average growth of 1.2 per cent per annum from 1964-65 to 1993-94.[1]

The main sources of productivity gains are the development and adoption of new technology and innovations, better organisation of production within firms, more efficient allocation of resources across industries and improvement of international competitiveness.

The freeing up of resources as a result of productivity improvements provides scope for their investment in more efficient uses, creating employment opportunities.

To ensure continued increases in the level of productivity growth, an ongoing commitment to reducing structural rigidities and developing and maintaining competitive markets is required. The PC has indicated that a significant contributory factor has been the sustained microeconomic reform over the last two decades.

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1 Productivity Commission 1999, *Microeconomic Reforms and Australian Productivity: Exploring the Links*, Commission Research Paper, p 23.

Ultimately, a competitive economy provides both the flexibility and incentives to adjust in a more rapid and less costly manner to changes in the domestic and international environment. This includes any structural changes.

Structural change refers to changes in the size and composition of an economy in terms of the distribution of activities and resources among firms, industries and regions. This may be the result of technological advances, changes in domestic and international consumption patterns and trade or changes in the provision of infrastructure or labour market services. These factors will have different impacts on different sectors of the community and regions, and over time.

It is important that the economy can effectively adjust to these changes. This requires flexible economic structures capable of taking advantage of emerging opportunities by facilitating the movement of resources (product, labour and capital) between and within industries. Competition reforms assist this process.

Effective competition in markets for goods and services provides the main impetus for firms to seek productivity improvements, and ensures that a greater proportion of these gains are distributed in the form of lower product prices rather than retained by firms as higher profits. This reduces operating costs and prices to business and consumers. It also encourages a wider range and improved quality of goods and services.

In seeking productivity gains, competition also provides a spur to innovation in product design, production processes and management practices. The manner in which resources are managed within the workplace, the rate of adoption of innovation and the development of associated skills play an important role in productivity growth.

Competition policy is a critical component of the broader structural reform agenda. It involves continuing efforts to reduce barriers to market entry and exit, reform of anti-competitive regulations and expose government owned businesses to competitive market forces in a competitively neutral manner.

Competition reforms also offer a further means to reduce market transaction costs — principally through a comprehensive program of

regulatory reform — and increase the information available to consumers to make informed choices.

National Competition Policy Framework

A series of microeconomic reforms have been undertaken over the past several decades.

In April 1995, the Commonwealth, States and Territories entered into three Inter-Governmental Agreements. These agreements are the *Conduct Code Agreement*; the *Competition Principles Agreement*; and the *Agreement to Implement the National Competition Policy and Related Reforms*. These Agreements aim to provide a timely, co-ordinated and comprehensive approach across all levels of government.

The commitments embodied in these agreements effectively underpin National Competition Policy (NCP) in Australia[2]. These reforms perform a mutually reinforcing role with other competition policy initiatives, such as the limitations on anti-competitive conduct established by the *Trade Practices Act 1974* and *Prices Surveillance Act 1983*.

The NCP framework targets particular opportunities for governments to encourage competitive outcomes. These include:

- The review and, if necessary, reform of legislation that is anti-competitive, with the requirement that where such legislation is to be retained or introduced it must be demonstrably in the community interest (Chapter 1).
- The implementation of competitive neutrality for all government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership. For example, they should be liable for the same taxes and charges, rate of return and dividend requirements as their private sector competitors (Chapter 2).

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2 The 1995 Agreements also resulted in the establishment of the National Competition Council (NCC), an inter-jurisdictional body funded by the Commonwealth. The NCC has statutory responsibilities under the Commonwealth *Trade Practices Act 1974* and *Prices Surveillance Act 1983*, as well as specified roles under the Agreements aimed at ensuring the effective introduction of NCP.

- The structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors (Chapter 3).
- The provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports, and communications networks) that would be uneconomic to duplicate, to encourage competition in upstream and downstream markets and reduced prices for related products (Chapter 4).
- Independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive. (The Commonwealth already has prices oversight provisions) (Chapter 5).
- The application of the Competition Laws across all jurisdictions, (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (Chapter 6).
- Ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment (Chapter 7).

Governments have made significant progress in implementing reform in the four years since the commencement of NCP. The benefits to the community from this process are now becoming evident, particularly in terms of lower prices to consumers.

NCP reforms have contributed to reductions in costs and prices across most infrastructure services that have been subject to reform. These include electricity, gas, rail, ports and telecommunications.

The PC has estimated that in the period 1991-92 to 1996-97 there has been a 25 per cent reduction in subscriber trunk dialling (STD) calls, a 9 per cent reduction in the real price of posting a standard letter and between 1991-92 and 1997-98 a 16 per cent reduction in the real average

price of electricity for all customers (that is, residential and commercial/industrial users).[3]

However, it is important to recognise that this is a long term process. Ongoing commitment by all levels of government to effective reform will be necessary to realise significant returns.

Box 1: What is the National Competition Policy?

National Competition Policy (NCP) is part of a broader structural reform program aimed at increasing living standards, productivity, and employment. It involves reducing business costs (including red tape), providing lower prices and greater choice for consumers and more efficient delivery of public services.

The NCP framework enables competition reform to be undertaken in a structured, transparent and comprehensive manner — seeking to ensure **all the costs and benefits** to the community and the distributional impacts of a particular course of action are identified and made available to decision makers for consideration.

While seeking to encourage more efficient use of resources, particularly in the public sector, the NCP does not:

- Mandate the privatisation of government business;
- Force contracting out of government services;
- Require the end of cooperative marketing by farmers;
- Ignore social, regional or environmental considerations; or
- Prohibit consideration of transitional adjustment assistance programs.

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3 Productivity Commission 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia*, Report no. 8, pp. XXXII-XXXIII.

Public Interest Test

NCP, microeconomic reform and globalisation have been claimed to result in adverse social outcomes.[4]

NCP is not concerned with reform or competition for its own sake. Rather, the focus is on competition reform that is in the 'public interest'. To this end, the *Competition Principles Agreement* (CPA) provides a mechanism — the public interest test — to examine the relationship between the overall interests of the community, competition and desirable economic and social outcomes.

It further sets out those factors to be taken into account in analysing the costs and benefits of various reforms. These factors are broader than the economic benefits and costs of a proposed reform.[5]

These include:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and 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.

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4 Senate Select Committee on The Socio-Economic Consequences of the National Competition Policy, *Riding the Waves of Change*, February 2000, p xiii.

5 The matters listed in clause 1(3) of the CPA are relevant when undertaking reviews of anti-competitive regulation, introducing competitive neutrality and reforming government businesses.

The Need for Safeguards

Competition policy is not about the pursuit of competition for its own sake, but creating an environment that encourages effective competition in the interest of efficient resource use and maximum community benefit — a major factor being lower prices and better choice and quality for consumers.

However, situations may occur where competition does not achieve this outcome (due to market failure) or conflicts with other social objectives. In many instances, reforms will be complemented by a regulatory framework that provides a safety net against market structures failing to deliver adequate competitive outcomes, addresses markets that are in transition towards competitive structures, or enables the delivery of community service obligations.

Furthermore, reforms will often result in short-term adjustment costs — potentially concentrated on specific sectors or geographical regions. While greater than the costs, the benefits usually accrue over the longer term and are more widely spread across the community.

In addition, the gains from competition reform will only be fully realised where resources can effectively move to more efficient uses.

As a consequence, in certain circumstances, consideration needs to be given to the assistance necessary to facilitate the adjustment to reforms.

In most cases, generally available assistance measures are the most appropriate form of assistance. General assistance measures have a number of advantages, including treating all people adversely affected by changed circumstances equally, addressing the net effects of reforms, concentrating on those in genuine need, supporting individuals and families rather than a particular industry, and being generally widely understood and already in place.

The advantages of a universal and general approach to meeting the needs of people adversely affected by change constitute a clear in-principle case for continued reliance upon the ‘safety net’.

Where general assistance measures are not considered effective, targeted assistance may be necessary to facilitate change. This should be designed to assist individuals make the transition to the new environment, smoothing the path for the adoption and integration of the reforms, not to maintain the *status quo* or to hinder or distort the desired outcome.

In general, specific assistance should be temporary, for special cases, transparent and inexpensive to administer.

The Commonwealth's Reporting Requirement

Under the *Competition Principles Agreement*, the Commonwealth is required to publish an annual report outlining its progress toward:

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition by the year 2000 (as outlined in the Commonwealth Legislation Review Schedule); and
- implementing competitive neutrality principles (including allegations of non-compliance).

However, to fully recognise the range of Commonwealth commitments established by the NCP Agreements, all areas of Commonwealth involvement have been reported.[6]

This report formally covers the period 1 July 1998 to 30 June 1999, although, where available, more recent information is provided in certain cases.

National Competition Policy Payments

Under the *Agreement to Implement the National Competition Policy and Related Reforms* (Implementation Agreement), the Commonwealth agreed to make NCP payments to those States and Territories assessed

6 The commitments contained within the NCP Agreements apply to both Commonwealth and State and Territory Governments. This report discusses these commitments from the Commonwealth perspective.

as making satisfactory progress toward implementation of specified competition and related reforms.

These payments represent the States and Territories' share of the additional revenue raised by the Commonwealth as a result of effective competition reform, and are worth approximately $5 billion (up to the year 2005-06).

The competition payments originally comprised three tranches of Competition Payments and the real per capita component of the annual Financial Assistance Grants. However, the grants component will cease from 1 July 2000, as agreed to by all States and Territories, with the signing of the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*.

- The first tranche of the Competition Payments commenced in 1997-98, and involved a maximum annual payment of $200 million (in 1994-95 prices).
- The second tranche of the Competition Payments commences in 1999-2000, and involves a maximum annual payment of $400 million (in 1994-95 prices).
- The third tranche of the Competition Payments commences in 2001-02, and involves a maximum annual payment of $600 million (in 1994-95 prices).

The Implementation Agreement specifies the commitments States and Territories must meet in order to receive the maximum NCP payment. The National Competition Council (NCC) assesses each jurisdiction's performance in implementing the required reforms prior to the commencement of the three Competition Payments tranche periods — 1 July 1997, 1 July 1999 and 1 July 2001. This assessment forms the basis for determining State and Territory eligibility for payment.

In response to the NCC's 1998 supplementary first tranche assessment, the Commonwealth made NCP payments to the States and Territories, for the period 1998-99, amounting to $422.6 million.

This assessment determined whether the States and Territories addressed first tranche NCP commitments identified as outstanding in the NCC's initial assessment in June 1997.

Payments amounting to $396.2 million had been made in 1997-98. These payments reflect the total possible payments States and Territories could receive.

The NCC's second tranche assessment was provided in July 1999. It recommended that all States and Territories, with the exception of Queensland, receive their full NCP payments for the first instalment (1999-2000) of the second tranche period.

The Commonwealth accepted the Council's recommendation, and suspended $14.83 million from Queensland's total possible 1999-2000 NCP payments of $118.67 million, pending a supplementary assessment by the Council to be conducted by 31 December 1999.

The Council will assess the extent to which Queensland is able to demonstrate that robust, independent appraisals are conducted to determine economic viability and ecological sustainability prior to investment in rural water schemes and/or implementation of the recommendations of such appraisals.

The 1999-2000 NCP payments are currently estimated at a maximum of $640.6 million.

Treasury Internet Site

Various Commonwealth publications relating to NCP matters are available from the Commonwealth Treasury website — http://www.treasury.gov.au.

Other relevant sites include the NCC (http://www.ncc.gov.au), the Productivity Commission (http://www.pc.gov.au) and the Australian Competition and Consumer Commission (http://www.accc.gov.au).

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 5).

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 Commonwealth introduced its regulation impact assessment process (*see* Section 1.4).

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 (*see* Chapter 6).

Box 4: 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.[7]

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 Commonwealth 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 paperwork burden for business.

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

A critical 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 5, 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 to 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 governments 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 5: Assessing the Public Interest

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

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- 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.

Source: *Competition Principles Agreement* (1995), sub-clause 1(3)

Commonwealth compliance with its 1998-99 legislation review requirements is independently assessed by the Productivity Commission[8] and reported in *Regulation and its Review 1998-99* and by the National Competition Council (NCC).

A detailed examination of Commonwealth progress during 1998-99 in the review and reform of existing anti-competitive legislation is contained in Sections 1.2 and 1.3. A summary of compliance with regulation impact assessment requirements for legislation introduced or amended after 1995 is in Section 1.4.

Where Commonwealth legislation is complemented or matched by State or Territory regulation, a co-ordinated 'national review' may be

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

undertaken. Commonwealth participation in national reviews for the period 1998-99 is examined in Section 1.3.

1.2 Commonwealth Legislation Review Schedule

The *Commonwealth Legislation Review Schedule* (CLRS) details the Commonwealth's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition or imposes costs on business by the year 2000.[9]

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.[10]

Legislation may be deleted from the Schedule 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 change to the Schedule requires the approval of the Prime Minister, Treasurer and the responsible Portfolio Minister(s). With the reallocation of responsibility for National Competition Policy matters within the Treasury portfolio, the Treasurer's role is now performed by the Minister for Financial Services and Regulation.

The CLRS as at 30 June 1999 is at Appendix A.

Reporting Requirements for Legislation Reviews

The following sections provide information on Commonwealth progress during 1998-99 in meeting its scheduled legislation review commitments.

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

The reviews have been organised to reflect both the scheduled commencement date, and the degree of progress made to date. For each individual review, information is provided on the following:

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,[11] and the commencement date of the review, is also identified.

Terms of Reference

The scope and structure of each review is 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.

The Office of Regulation Review (ORR)[12] is required to approve the terms of reference for any scheduled Commonwealth review. To assist this process, and to ensure a consistent approach and focus to reviews,

11 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.

12 *See* footnote 8 and Section 1.4 for further information on the responsibilities of the ORR.

the ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[13]

A copy of each review's terms of reference is included in an attachment to this chapter.

Extent of Public Consultation

Public consultation is a required part of all Commonwealth legislation reviews. This obligation was stipulated by the Commonwealth 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 will 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 in 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.

1.2.1 Legislation Scheduled for Review in 1998-99

This section outlines progress in those Legislation Reviews scheduled to commence in 1998-99. The reviews are grouped according to the extent of progress made.[14]

1.2.1.1 Review Completed and Reform Outcomes Announced

Trade Practices Act 1974 — Part X (shipping lines)
(Department of Transport and Regional Services)

Part X of the *Trade Practices Act 1974* (TPA) regulates the conditions under which international liner shipping companies are permitted to collaborate as conferences in Australia in order to provide joint liner services (joint scheduled shipping services). The Part provides limited and conditional exemptions from Part IV (anti-competitive conduct provisions) of the TPA, which, in relation to outwards liner shipping services, involve various obligations toward Australian exporters.

The review commenced in March 1999. It was conducted by the Productivity Commission (PC). Dr Neil Bryon was the Presiding Commissioner and Dr Robin Stewardson the Associate Commissioner.

Public Consultation

The PC advertised for submissions in national and specialist industry press in March 1999. An issues paper was released, and a round of visits to industry participants and other interested parties was undertaken. Twenty five submissions were received.

An interim Position Paper was released on 29 June 1999, resulting in a further fifteen submissions. Public hearings were conducted in Sydney and Melbourne in July.

Review Recommendations

The Productivity Commission submitted its final report, *International Liner Cargo Shipping: Part X of the Trade Practices Act 1974*, to the

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

Government in September 1999. The report was released on 23 December 1999.

It recommended that Part X should be retained and re-examined in 2005. This was based on the findings that Part X:

- involves minimal — but adequate — regulation and promotes commercial relationships and commercial dispute resolution;
- is neutral with respect to market arrangements and has not hindered efficient market outcomes or hindered competitive forces in liner shipping markets;
- has supported the negotiating position of Australian shippers (that is, exporters) and assisted in providing them with predictable service outcomes;
- is compatible with international regulatory regimes; and
- is low cost.

There were a number of further specific recommendations.

- Clarification that the exemption relating to rate setting extends to land-based charges that normally form part of the 'terminal-to-terminal' shipping contract (that is, one that includes not only the 'blue water' component but also the sorting and stacking of containers within a container terminal). The Commission favours widening the definition of terminal from the present 'within the limits of a wharf as under the *Customs Act 1901*' to include terminals located within the metropolitan area of port cities. (Recommendation 8.1A)
- Confirmation of the existing practice of allowing members of shipping conferences to negotiate collectively with stevedores. (Recommendation 8.1B)
- Deletion of sections 10.14.2 and 10.22.2, which allow the fixing of door-to-door freight rates by conferences for outward and inward liner shipping respectively. Deleting these sections will require the insertion of a clause in sections 10.14.1 and 10.14.2 permitting conferences to set terminal-to-terminal rates.
(Recommendation 8.2)

- Repeal of section 10.05, which prohibits price discrimination in certain circumstances. The Commission considers that the price discrimination provisions of Part X serve no useful purpose and indeed are potentially harmful if they discourage efficient price discrimination. In addition they would be extremely difficult to implement. (Recommendation 8.3)
- Addition of a national interest test, similar to that in section 10.67 of Part X, to apply to any determination by the Minister in relation to sections 10.45(a)(v) and 10.53. This amendment would ensure that shippers' interests were taken into account explicitly in a Ministerial determination as to whether a conference or non-conference carrier with substantial market power was misusing market power in order to hinder an efficient Australian carrier. (Recommendation 8.4)
- Provision for more effective and flexible enforcement of undertakings. The provisions of section 87C of the TPA could serve as a useful model. (Recommendation 8.5)

In addition to making recommendations, the report contains findings on several issues on which it decided not to recommend amendments to the current legislation. These were:

- the method of dealing with Terminal Handling Charges (THCs) should be a matter for negotiation between shippers and carriers (Finding 8.1);
- while importers should not be precluded from forming a collective to negotiate THCs if a cost effective mechanism can be devised, imposing the arrangements applying to outward shipping conference agreements to inward conference agreements could pose significant jurisdictional problems for little benefit (Finding 8.2);
- Non-binding discussion agreements (which cover conference and non-conference carriers) should not be treated differently from other forms of cooperation among carriers (Finding 8.3);
- sufficient competitive pressures exist to negate any potential monopoly power of closed conferences (Finding 8.4);
- the current controls in Part X should be retained (Finding 8.5);

- the processes for registering conference agreements provide important transparency benefits and should be retained (Finding 8.6);
- funding for the Australian Peak Shippers' Association should come from beneficiaries of its activities, namely Australian shippers (Finding 8.7); and
- should be retained in the TPA rather than being transferred to a separate Act (Finding 8.8).

Government Response

In December 1999, the Government announced that it had accepted the recommendations of the PC to retain Part X of the TPA. However, it will implement some further amendments to improve the application of competition policy principles to international liner shipping and to protect the interests of Australian shippers (exporters and importers).

The government supports recommendation 8.1A. However, this will be clearly defined as contracts covering ocean transport as well as loading and discharge operations undertaken on behalf of a liner shipping company. These operations may take place at terminals on the waterfront or some inland depot type facility used for assembling export cargo for delivery to a port, or delivering cargo to importers.

The government agrees with recommendation 8.1B, indicating that allowing carriers to negotiate a conference rate with stevedores promotes efficient outcomes, as it allows conference carriers in each trade to utilise countervailing market power in negotiations with stevedores in the duopoly stevedoring market prevailing in most Australian ports.

It was also considered appropriate that this regulatory regime be periodically reviewed, given the dynamic nature of international liner cargo shipping.

In addition to the Commission's recommendations, the Government has decided that the Minister for Transport and Regional Services and the Australian Competition and Consumer Commission (ACCC) should have some increased powers to address concerns about unreasonable anti-competitive behaviour.

The Government has accepted Findings 8.1, 8.5, 8.6, 8.7 and 8.8. In respect of the other Findings the Government has made the following decisions:

Finding 8.2

The current practice of providing inward liner shipping lines with a blanket exemption to collaborate as conferences, without any of the obligations imposed on outward shipping conferences, exposes importers to possible abuse of market power by inward conferences. The Government has decided that, as far as practicable, the arrangements applying to outward conferences should also apply to inward conferences.

It is recognised that care will need to be taken to avoid conflicts of jurisdiction that may arise where inward conferences are subject to competition laws in the country of export.

Both the USA and the European Union have exercised jurisdiction over inward and outward conferences for some time. The OECD has established a set of principles concerning the regulation of international liner shipping, which include principles aimed at avoiding problems from overlapping jurisdictions. The Government will be guided by these principles.

Finding 8.3

The Government has noted the PC's view that discussion agreements (that is, non-binding agreements covering conference and non-conference carriers) should not be treated differently from other forms of cooperation among carriers.

However, the 1993 independent review of Part X, chaired by Mr Patrick Brazil, AO (Brazil Review), came to the conclusion that additional powers were needed to protect shipper interests in respect of agreements of that type. The Government has also noted that exporters that participated in the PC review considered that discussion agreements should be subject to greater scrutiny and controls.

Discussion agreements, and similar types of arrangements among shipping lines, have the potential to cover a very large proportion of

carriers in a particular trade and as such have the potential to significantly reduce the current levels of competition in liner trades.

This in turn could lead to unreasonable increases in freight rates and/or unreasonable reductions in shipping services.

Accordingly, the Government has decided that the Minister for Transport and Regional Services and the ACCC should have increased powers to deal with concerns that may arise from the operation of certain agreements that are likely not to result in a public benefit (for example, accords and discussion agreements). These concerns are only likely to arise in 'exceptional circumstances'.

Under these arrangements, the ACCC will be empowered to undertake an investigation on its own initiative into such agreements and make recommendations to the Minister. The Minister will have the power to suspend the operation of such agreements (in whole or in part) if, after consultations with affected parties (that is, conference lines and shippers), the conference lines do not give a court enforceable undertaking that would make suspension unnecessary.

The Government recognises that shipping lines need to have confidence that the Part X exemptions will stand so long as they conduct their business in accordance with the objects of Part X, and do not engage in conduct that is, or is likely to be, against the public benefit.

Guidelines will be issued covering the exercise of the increased powers granted to the Minister and the ACCC. This will include a preliminary assessment, by the ACCC, of the need for a public inquiry and the following criteria for assessing whether 'exceptional circumstances' exist:

- the agreement covers a substantial majority of shipping lines and capacity in a trade;
- the conduct of the parties to the agreement has led to, or is likely to lead to, an unreasonable increase in freight rates or an unreasonable reduction in services; and
- the public benefit flowing from the agreement is outweighed by the anti-competitive detriment.

It is intended that the relevant industry parties be consulted in the preparation of the guidelines.

Decisions made under the increased powers will be reviewable by the Australian Competition Tribunal in line with arrangements applying to authorisations and notifications under Part VII of the TPA.

Finding 8.4

The Government accepts the PC's finding that shipping lines should be allowed to continue to form 'closed conferences' (that is, those that require agreement by existing members before new members are admitted).

However, where refusal to admit a new member to a conference is considered to be contrary to the interests of shippers, the Minister and the ACCC would be empowered to investigate the situation. If such an investigation reveals that refusal to admit the new member is unreasonable, the Minister will be empowered to exercise the powers mentioned under Finding 8.3 above, with such a power being reviewable by the Australian Competition Tribunal.

1.2.1.2 Reviews Commenced but not Completed

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, education and information purposes. The Acts seek to provide a regulatory environment that varies according to the degree of influence of certain services on society, and that facilitates the development of an efficient and competitive market that is responsive to audience needs and technological developments.

These 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 program material; and, protecting children from program 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. It is being undertaken by the PC, under the direction of Professor Richard Snape, President Commissioner and Mr Stuart Simson, Assistant Commissioner.

Public Consultation

The PC placed a notice in the national press inviting public participation in the inquiry and released an issues paper to assist the preparation of submissions by the public. One hundred and seventy-seven submissions were received prior to the release of the draft report. Informal discussions were also held with key stakeholders.

Public hearings were held in Melbourne, Sydney and Brisbane, with video conferences to Perth, Adelaide and Hobart, during May and June 1999. These were attended by 67 individuals and organisations.

The PC released a draft report, *Broadcasting*, in October 1999. A further invitation for written submissions and attendance at public hearings was made.

Review Progress

The Commission is required to present its final report to the Government by 5 March 2000.

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

The *Dairy Produce Act 1986* underpins the Government's arrangements relating to the manufacturing milk sector (milk used in the manufacture of dairy products such as butter, cheese and milk powders). It specifies the objectives, functions and administrative arrangements of the Australian Dairy Corporation (ADC) and provides for the operation of the Commonwealth's Domestic Market Support (DMS) scheme.

The review formally commenced in December 1998, with the approval of the terms of reference. It is to be conducted by the PC.

In 1999, a working group comprising representatives from all sectors of the dairy industry initiated a review focussed on how the dairy industry will operate in a deregulated environment. An important aspect of the review is the assessment of what industry based structures and activities will be required in the future, including an evaluation of the services currently provided by the ADC to determine which services will be required after deregulation.

The PC review has been delayed until 1999-2000, to provide sufficient time to address industry uncertainty regarding the future operating environment for the deregulated dairy industry; in anticipation of the outcomes of the current industry review; and, in reflection of the Commission's current resource constraints.

Fisheries Legislation
(Department of Agriculture, Fisheries and Forestry)

The review encompasses a number of Commonwealth Acts that govern fisheries management in Australian waters. The most significant being 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. It is being conducted by a committee of officials, chaired by Mr Fred Woodhouse, and composed of representatives of RECFISH, Environment Australia, the Australian Fisheries Management Authority, Australian Seafood Industry Council, Commonwealth Scientific and Industrial Research Organisation and Commonwealth Department of Agriculture, Fisheries and Forestry.

Public Consultation

An issues paper was released in April 1999, and submissions called for by 8 June 1999. A total of 12 submissions were received.

Review Progress

The draft report is expected to be provided by the end of March 2000.

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, Science and Resources, Attorney-General's Department)

The general objective of intellectual property law is to maximise the difference between the social value of intellectual property created and used, and the social cost of its creation (including the cost of administering the system). Thus the law endeavours to provide an appropriate incentive and reward for innovation by balancing the interests of innovators and the general public.

The review of the intellectual property protection legislation (*Designs Act 1906*, *Patents Act 1990*, *Trade Marks Act 1995*, *Copyright Act 1968* and *Circuit Layouts Act 1989*) commenced in June 1999. It is being undertaken by an independent committee of review chaired by Mr Henry Ergas, Managing-Director of the independent economic consultancy, The Network Economics Consultancy Group. Mr Ergas has a strong background in Australian and international industry policy, competition policy, and regulation.

The committee also includes Professor Jill McKeough, Head of School, Faculty of Law, University of New South Wales, and Mr John Stonier, former BHP Director of Development and Investments. Mr Andrew Bain, former Director General of IP Australia is assisting the committee as special adviser.

Public Consultation

An issues paper was released for public comment on 17 September 1999, with comments to be provided to the Review Committee by 15 November 1999. The Review Committee has undertaken further consultations throughout Australia.

Review Progress

A draft report is expected to be released in April 2000.

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
(Department of Finance and Administration)

The *Land Acquisition Act 1989* provides the legislative framework for the Commonwealth to acquire and dispose of property. In particular it provides for the compulsory acquisition of interests in land and the determination of compensation payable. The *Land Acquisition (Defence) Act 1968* has the singular purpose of acquiring some particular land in NSW which could not be acquired at the time by the *Lands Acquisition Act 1955*. The *Land Acquisition (Northern Territory Pastoral Leases) Act 1981* acquires some particular leases in the Northern Territory. It was enacted as a protective measure in case the acquisition effected by the *Land Acquisition Act* was found to be invalid.

The review of the Land Acquisition Acts commenced in May 1999. It is being undertaken by a intra-departmental committee consisting of a General Manager (Chair), and three other senior officers. Additionally, a consultant in administration provided comments on the draft recommendation.

Public Consultation

Advertisements were placed in the national press announcing the review, and calling for public submissions.

Review Progress

It is expected that the final review report will be publicly released shortly.

1.2.1.3 Reviews not Commenced

Anti-dumping Authority Act 1988, Customs Act 1901 Part XVB and Customs Tariff (Anti-dumping) Act 1975
(Attorney-General's Department)

The review of the *Anti-dumping Authority Act 1988*, *Customs Act 1901* Part XVB and the *Customs Tariff (Anti-dumping) Act 1975* was rescheduled to commence in 1999, to allow implementation of the Government's commitments to reduce the time taken for individual inquiries into possible dumping of imports.

The details as to the timing and terms of reference for the inquiry are yet to be finalised.

Reference to the *Anti-dumping Authority Act 1988* has been deleted, as this act was repealed in December 1998.

Australia New Zealand Food Authority Act 1991
Food Standards Code
(Department of Health and Aged Care)

This review had not commenced by 30 June 1999.

Customs Act 1901 — Customs (Prohibited Exports) Regulations — Nuclear Materials (Regulation 11 export controls)
(Attorney-General's Department)

This review had not commenced by 30 June 1999. It was subsequently deleted from the schedule.

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

The Department of Defence has conducted an internal review of this legislation. Confirmation regarding its consistency with Commonwealth Legislation Review requirements is being assessed.

Export Finance & Insurance Corporation Act 1991,
Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991
(Department of Foreign Affairs and Trade)

This review had not commenced within the reporting period. It was subsequently deferred pending the outcome of a separate review process required by Government, and expected to address the same issues.

Financial Transaction Reports Act 1988 and Regulations
(Attorney-General's Department)

The objective of the *Financial Transaction Reports Act 1998* is to facilitate the administration and enforcement of taxation laws, and laws of the Commonwealth and Territories other than taxation laws, and to make information collected for these purposes available to State authorities to facilitate the administration and enforcement of State laws.

Draft terms of reference have been provided to the Office of Regulation Review for approval.

Health Insurance Act 1973 Part IIA
(Department of Health and Aged Care)

The review of Part IIA of the *Health Insurance Act 1973* as it relates to the Pathology Licensed Collection Centre Scheme had not commenced by 30 June 1999.

This delay largely reflected the impact of negotiations with the pathology profession on the second Pathology Agreement in the lead up to the 1999-2000 Budget. The Agreement contains a number of major initiatives including a cap on annual growth in Medicare outlays on

pathology, the replacement of the Licensed Collection Centre Scheme from 1 July 2000 with a new set of arrangements for specimen collection centres, and a broader review of the legislation relating to pathology.

The review is expected to commence in early 2000.

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 measurement of ships and a range of administrative measures relating to ships and seafarers.

The review of the coastal trade provisions of Part VI of the Act was scheduled for review in 1998-99. In 1997, the Shipping Reform Group considered these provisions in its report. Accordingly, a comprehensive review of the other parts of the Act was substituted for Part VI review.

The review is being conducted by officials of the Department of Transport and Regional Services and the Australian Maritime Safety Authority. The review team is operating with the guidance of an independent steering group comprised of 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, Department of Transport and Regional Services.

Public Consultation

An issues paper was distributed to over 200 stakeholders. In August 1999 the review team wrote to interested parties, which included shipping lines and shipping organisations, maritime unions, shipper organisations, marine pilots, shipbuilder associations, international, Commonwealth and State government agencies, seafarer welfare organisations and conservation groups, sending them a copy of the issues paper and inviting submissions. The review was also advertised

in major newspapers and in the specialist shipping papers *Lloyds DCN* and *Lloyds International*.

Submissions were received from 44 individuals and organisations. Workshops were held in Melbourne, Sydney and Perth during September 1999 to brief industry on the review and to identify the main issues of concern to the shipping, bulk shipper and offshore petroleum industry support sectors. The National Marine Safety Committee Industry Advisory Panel was briefed about the review on 31 August 1999 in Brisbane.

The review has endeavoured to ensure close consultation with parallel reviews being conducted by the Department of Industry, Science and Resources of the *Petroleum (Submerged Lands) Act 1967* and the associated safety case regime for offshore petroleum installations.

Review Progress

A progress report was provided to the Minister for Transport and Regional Services in December 1999, outlining the principal issues and proposed policy direction of the review. The Minister endorsed the proposed directions as a basis for further consultations with stakeholders.

The final report is due by July 2000.

Veterans' Entitlement Act 1986 — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)
(Department of Veterans' Affairs)

The review had not commenced by 30 June 1999.

1.2.2 Legislation Scheduled for Review in 1997-98 — Reform not Finalised by 30 June 1998

The *1997-98 Commonwealth Legislation Review Annual Report* outlined the progress of those legislation reviews scheduled to commence within that year (or earlier). Many had not reached the reform implementation stage by the end of the reporting period.

This section updates the progress of these reviews and any reforms that have consequently been implemented.

Reviews Completed and Reform Outcomes Announced

International Air Services Agreements, International Air Services Commission Act 1992

(Department of Transport and Regional Services)

Australia's international air services are conducted within a framework of bilateral air services agreements and arrangements between pairs of countries. There are currently over 3000 such arrangements worldwide, 55 involving Australia. An International Air Services Agreement (ASA) specifies the terms and conditions under which airlines of the two countries involved can fly to, from, between and beyond each country.

The International Air Services Commission (IASC) is a statutory body responsible for allocating capacity negotiated under Australia's ASAs to existing and potential Australian international carriers.

Australia's ASAs and the *International Air Services Commission Act 1992* were separately scheduled for review, with the ASAs review to be conducted in 1996-97. The two reviews were subsequently combined and referred to the (then) Industry Commission for inquiry in December 1997.

Public Consultation

The Industry Commission commenced the consultation process with informal discussions and a request for input from concerned stakeholders. This was followed up with an initial set of hearings in March 1998. In June, the PC (formerly the Industry Commission) released a draft report embodying a series of draft recommendations for comment. A round of public hearings was held in July 1998.

Review Recommendations

The PC submitted its final report in September 1998. The report's main recommendations were:

- That Australia should seek to negotiate reciprocal 'open skies' agreements on a bilateral basis which would remove restrictions on:
  - capacity and frequency to, from, between and beyond Australia and its bilateral aviation partner;
  - codesharing on each other's airlines;
  - routes, including points of access to the Australian and the bilateral partner's markets, intermediate and beyond points;
  - multiple designation of airlines by Australia and the bilateral partner;
  - ownership as a basis for airline designation; and
  - prices.
- Such reciprocal arrangements should also contain restrictions on government subsidies, where these are significant. Australia should also be prepared to negotiate, on a case by case basis, removal of restrictions on cabotage and the development of 'stand alone' services between the bilateral partners and third countries (so called seventh freedom services).
- The Australian Government should promote discussion with the World Trade Organisation (WTO) membership to determine a process for including all air services in General Agreement on Trade in Services (GATS).
- As a step toward the further liberalisation of international air services, the Commission recommends reforms to ASAs to benefit regional Australia, encompassing both bilateral and unilateral elements.
- Bilaterally, Australia should offer unlimited capacity to fly to all airports other than Sydney, provided that Australian carriers are offered the same routes on a reciprocal basis by their bilateral partners. The Australian Government should take up the British offer of similar opportunities.
- Unilaterally, Australia should offer within negotiated capacity:

- removal of restrictions on the number points to be served and designation of all cities in Australia other than Sydney, Melbourne, Brisbane and Perth;
- unrestricted rights for foreign airlines to codeshare to all points in Australia on Australian domestic airlines; and
- unrestricted rights for foreign airlines to carry their own stop-over traffic.

- Contested capacity should continue to be allocated by the IASC using a public benefit test.

Government Response

On 3 June 1999, the Government issued a joint statement by the Treasurer and the Minister for Transport and Regional Services on international aviation policy.

International Air Service Agreements

The Government decided that Australia would, in future, seek to negotiate 'open skies' arrangements with like-minded countries where this is in the national interest.

In other cases, the Government will seek to negotiate the most liberal bilateral arrangements possible, including unrestricted access for dedicated freight aircraft and a regional package offering international airlines unrestricted access to all of our international airports except Sydney, Melbourne, Brisbane and Perth.

The current consultation arrangements for advice to the Minister for Transport and Regional Services on the negotiating position for air services negotiations will be extended and formalised. The decision on what constitutes the national interest remains with the Minister.

The Government disagreed with the recommendation that foreign international airlines be able to carry domestic traffic within Australia as a right traded under a bilateral air services agreement. The conclusion of the review was that it would be of only marginal economic benefit.

It also decided to reform the foreign ownership rules for Australian airlines. Foreign persons (including foreign airlines) will be allowed to

acquire up to 49 per cent of the equity of an Australian international airline (other than Qantas), and up to 100 per cent of the equity in an Australian domestic airline, unless this is contrary to the national interest.

The existing ownership restrictions on Qantas will be retained. These limit foreign ownership of Qantas to 49 per cent, ownership by foreign airlines in aggregate to 35 per cent, and ownership by an individual (including a foreign carrier) to 25 per cent.

The Government will also seek to liberalise international aviation on a multilateral basis through regional initiatives such as APEC and through the GATS round beginning in 2000.

International Air Services Commission

The Government will reform the roles and responsibilities of the IASC to simplify processes for allocating capacity to airlines.

The Government disagreed with the recommendation that the start up provisions be removed from the Minister's policy statement. It considers that where capacity is constrained under an ASA, start up criteria provide a 'one-off' chance to introduce Australian competition on the route through allocating a new entrant a level of capacity appropriate to the development of efficient, economically sustainable services.

It also disagreed with the recommendation that capacity allocations should be made in perpetuity and the IASC should be rigorous in enforcing the 'use-it-or-lose-it' provisions. The Government considers the existing review process of determinations is based on the proper assumption that these scarce rights are not 'owned' by the carriers. This process provides the necessary transparency for all parties concerned as well as the opportunity for capacity to be re-allocated should market and/or policy conditions change.

1.2.2.2 Reviews Completed, Recommendations under Consideration

Australia New Zealand Food Authority Act 1991
(Department of Health and Aged Care)

The review was originally scheduled for 1998-99 but was brought forward to coincide with the broader Food Regulation Review, undertaken by the Food Regulation Review Committee (*see* page 103).

Public Consultation

See page 104.

Review Recommendations

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was tabled in Parliament in August 1998, and is publicly available. The report made four recommendations relevant to the *Australia New Zealand Food Authority Act 1991.*

These include a number of amendments to the Act to remove potentially anti-competitive provisions and improve the efficiency of the food standards setting processes. In particular, the report recommends:

- the inclusion of an objective into the Act; amendment to the current section 10 objectives used for developing standards and updating of Australia New Zealand Food Authority's (ANZFA) legislated functions; and
- the inclusion of a new section that provides that in carrying out is regulatory functions, the Authority must consider whether the benefits to the community as a whole will outweigh the costs and whether there are no alternatives which are more cost-effective in achieving such benefits.

Government Response

These recommendations were incorporated into amendments tabled in the Senate in March 1999. This bill was referred to a Senate Committee, which reported in August 1999.

Bankruptcy Act 1966 and Bankruptcy Rules — Trustee Registration Provisions

(Attorney-General's Department)

The trustee registration provisions establish the qualifications and experience required by persons to be registered as bankruptcy trustees.

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.

It was conducted by John Hawkless Consultants Pty Ltd, a consultant appointed by the Insolvency and Trustee Service Australia (a division of the Commonwealth Attorney-General's Department).

Public Consultation

The review process principally involved consultation with key stakeholders such as registered trustees and credit providers and, through peak bodies, other insolvency practitioners and financial counsellors. Submissions from the public were invited.

Report Recommendations

The review report was finalised on 9 December 1998. It recommended that Insolvency and Trustee Service Australia (ITSA) continue to register bankruptcy trustees and that a handover 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 for Justice and Customs approved the recommendations in late January 1999, subject to the comments of the Minister for Financial Services and Regulation, the Hon Joe Hockey, MP. On 24 June 1999, Mr Hockey advised that he had no comments on the matter.

As a pre-requisite to consideration of any possible handover of the trustee registration function to the private sector, ITSA is considering a possible implementation strategy in consultation with the

Commonwealth Treasury (which is considering a review of the regulation of corporate insolvency practitioners).

Customs Act 1901, Sections 154-161L (Customs Valuation Legislation)
(Attorney-General's Department)

The legislation provides the basis for determining the customs value of goods imported into Australia. This 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 will also contribute to the calculation of Goods and Services Tax (GST) on imported goods after 1 July 2000. The legislation enacts Australia's obligations under the World Trade Organisation (WTO) Customs Valuation Agreement (*Implementation of Article VII of the General Agreement on Tariffs and Trade*).

The review of sections 154 to 161L of the *Customs Act 1901* commenced in June 1998. It was conducted by a taskforce of officials from the Department of Industry, Science and Resources, the Department of Foreign Affairs and Trade and the Australian Customs Service. Officers from the Australian Tax Office, Australian Bureau of Statistics and Commonwealth Treasury acted as observers in the review process.

Public Consultation

Advertisements were placed in the national press announcing the review, and calling for public submissions. Public hearings were also held. A draft report was released in January 1999. Thirty two parties participated in this process.

Review Report

The review report was completed in April 1999 and made public on 16 June 1999. It recommended:

- sections 154-161L of the *Customs Act 1901* should be repealed and redrafted in a clear, straightforward and logically organised 'plain English' format that incorporates the language and terminology of the WTO Agreement on Customs Valuation as far as possible and is consistent with the Agreement;

- the redrafted legislation should contain clear statements of its purpose and objectives, including the primary purpose of specifying the methods for determining the value of all imported goods;
- the proposed new legislation should make clear the statutory basis on which importers are required to self-assess the value of imported goods;
- the legislation or its supporting material should clearly explain the principles which underpin Australia's import valuation procedures and the intent behind each of the provisions in the legislation;
- the Australian Customs Service (ACS) should examine the feasibility of adopting a system of public valuation rulings; and
- the ACS should introduce, at the same time as the new legislation comes into effect, a program to provide public information about the requirements for valuation of imports under the proposed new legislation.

Government Response

The ACS has consulted widely with other government agencies and there is general support for the recommendations. The support of relevant Ministers is currently being sought, at which time the Minister for Justice and Customs will write to the Prime Minister seeking approval to give effect to the recommendations. A government response is expected shortly.

Export Control Act 1982 (such as fish, grains, dairy, and processed foods)
(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 review (in relation to goods such as fish, grains, dairy processed foods etc) commenced in February 1998. It is being conducted by a review committee, chaired by Mr Peter Frawley, Chairman, Livecorp. Other members include Mr Raoul Nieper, an independent consultant and Chairman of the Australian Animal Health Council,

Mr Lyndsay Makin, independent consultant, and Ms Barbara Wilson, National Manager (Technical Services) with the Australian Quarantine and Inspection Service (AQIS).

Public Consultation

Key stakeholders were contacted in February 1999 to assist in defining the major issues for the review. Advertisements were placed in the national press in March, inviting submissions on the operation of the Act. Invitations to make a submission were also sent to over three hundred stakeholders, including industry, commonwealth and state government bodies and governments of countries with significant agricultural imports from Australia.

Over sixty written and verbal submissions were received. Other contemporary reviews were also drawn upon, including the Food Regulation 'Blair' Review and the Quarantine and Exports Advisory Council (QEAC) reviews of Dairy, Grains, Horticulture and Fish.

Three hundred and twenty copies of the draft report were circulated to all major stakeholders, all of whom made a submission, and on request. A face-to-face consultation process has continued, involving over 30 stakeholders.

A draft report was prepared in September 1999. Research was conducted into the costs and benefits of the Act, with the Australian Bureau of Agricultural and Resource Economics providing aspects of economic analysis.

Review Progress

The final report was released in February 2000. Copies have been sent to stakeholders. Copies are available from the Shop front, Department of Agriculture, Fisheries and Forestry (AFFA).

The recommendations of the review report are as follows:

Recommendation 1

The Review Committee recommends that:

- *The Export Control Act be retained in its current form and with its current general structure.*
- *The title of the Act to be changed to the 'Export Assistance Act'.*

Recommendation 2

The Review Committee recommends that:

- *the Act be amended to include a statement of specific objectives.*

Recommendation 3

The Review Committee recommends that programs established under the Act be administered under the following three tier model comprising:

- *Australian Standards (Tier 1);*
- *Standards set by overseas governments for access to their markets (Tier 2); and*
- *Market specific requirements (Tier 3).*

Recommendation 4

The Review Committee recommends that:

- *Domestic and export standards for the production of food and agricultural products in Australia be harmonised and that they be consistent with relevant international standards.*

Recommendation 5

The Review Committee recommends that:

- *Certification of Australian export products continue to be administered by a single government based agency.*

Recommendation 6

The Review Committee recommends that:

- *Monitoring and inspection arrangements be made fully contestable under all programs as soon as third party arrangements are acceptable to overseas governments.*

Recommendation 7

The Review Committee recommends that:

- *The focus of the Act extend through the entire food chain and not rely primarily on the product preparation stages immediately prior to export, as occurs at present.*

Recommendation 8

The Review Committee recommends that:

- *Specific criteria for the application of the Act be prepared in consultation with industry.*

Recommendation 9

The Review Committee recommends that:

- *Only prescribed goods be certified under the Act.*

Recommendation 10

The Review Committee recommends that QEAC establish a program of periodic monitoring of the operation, particularly in economic terms, ensuring that:

- *the activity under the Act and its administration are measurable against its objectives; and*
- *the Act be periodically monitored in relation to the net benefit it confers.*

Recommendation 11

The Review Committee recommends that:

- *The current review of subordinate legislation should be accelerated and conducted with reference to the principles expressed in the Report, in particular, reflecting the partnership between government and industry, and the assumption of greater industry responsibility.*

Recommendation 12

The Review Committee recommends that:

- *a Development Committee be established for each program;*
- *membership of the Committees comprises representatives of AQIS and industry;*
- *the Committees operate independently and be charged with the specific responsibility to determine strategies, establish priorities and approve plans for their implementation; and*
- *QEAC review the performance of these committees biennially and report to the Minister against the adopted plans.*

Recommendation 13

The Review Committee recommends that AQIS moves quickly to align the administration of the regulation with current Government policy on electronic commerce, recognising in particular:

- *advantages in establishing more easily accessible information bases and information services for stakeholders on such issues as importing requirements and microbiological testing; and*
- *the benefits of placing a greater emphasis on electronic commerce, particularly given government policy on this issue.*

Recommendation 14

The Review Committee recommends that the outcome of this Review and its recommendations be included as part of the Council of Australian Governments (COAG) policy on the reform of food regulation and further that:

- *AFFA/AQIS progress the recommendations in this context by developing an implementation plan with milestones for achievement over the next five years. The plan must show substantial changes occurring within 18 months.*
- *The Minister establishes a reporting framework for progress on implementation of recommendations taking into account the role of other government bodies, apart from AQIS. Implementation of the Committee's vision depends on securing commitment from Commonwealth bodies such as Australia New Zealand Food Authority (ANZFA) and all State and Territory Governments.*

- *Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) oversights implementation of the Three-Tier model and facilitates harmonisation of State/Commonwealth standards for each industry or program area encompassed by the Act.*

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, Training and Youth Affairs)

The scheduled review of higher and vocational education funding legislation was subsumed into the *Review of Higher Education Financing and Policy* (West Review) announced in January 1996.

The review committee comprised Mr Roderick West (Chair), Mr Gary Banks, Professor Peter Baume AO, Professor Lachlan Chipman, Dr Doreen Clark, Mr Clem Doherty and Professor Kwong Lee Dow, AM.

Public Consultation

Submissions from the public were a key input to the review committee's deliberations. In February 1997, an open invitation was extended to interested individuals and organisations to make written submissions to the review. A total of 391 submissions were received by mid October 1997, provided by private individuals as well as a range of organisations representing interest groups and peak bodies. The review committee also undertook to visit and consult with key stakeholders.

A public discussion paper was released, with interested persons given until 5 December 1997 to make further written comments.

Review Recommendations

The deadline for the provision of the final report was extended to March 1998, with the review committee actually reporting to the Minister for Employment, Education, Training and Youth Affairs on 17 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 to 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.

Imported Food Control Act 1992 and Regulations

(Department of Agriculture, Fisheries and Forestry)

The *Imported Food Control Act 1992* and associated regulations set up the Imported Food Inspection Program (IFIP), which aims to ensure that imported food is safe for consumption.

The review commenced in March 1998. It was conducted by an independent committee, chaired by Dr C Tanner, Associate Dean, Department of Agriculture, University of Sydney. Other committee members were Ms E Flynn (Acting General Manager, Australian and New Zealand Food Authority), Mr A Beaver (Secretary, Food and Beverage Importers Association) and Dr A Carroll (Acting National

Manager, Animal and Plant Programs, Australian Quarantine and Inspection Service).

Public Consultation

A call for submissions was advertised nationally on 1 May 1998, with a closing date of 5 June 1998. Thirty submissions were received. There was also extensive consultation with stakeholders (individual firms, industry peak bodies, consumers, experts and government agencies), comprising individual and group meetings and site visits. A draft report was also released for public comment.

Review Recommendations

The report was finalised late in 1998 and distributed in January 1999. It is available at the internet site:

http://www.aqis.gov.au/docs/cleb/ifcatoc.htm.

The report contained the following recommendations:

Recommendation 1

The Review Committee recommends that the Act be amended in order to more clearly state its objectives. The following should be considered:

- *The objective of the Imported Food Control Act is to provide for the compliance of imported food with the Australian public health and food standards.*

Recommendation 2

The Review Committee recommends that:

- *a new combined surveillance category be established in legislation for all foods other than risk categorised foods.*

Recommendation 3

The Review Committee recommends that:

- *assessment be undertaken by AQIS, in consultation with stakeholders, to determine appropriate inspection levels and strategies for risk and surveillance foods to achieve the objectives of the Act; and*

- *AQIS consult with stakeholders to develop and implement an assurance regime that is based on individual and collective performance in the imported food industry.*

Recommendation 4

The Review Committee recommends that:

- *inspection rates not be detailed in the legislation; and*
- *legislation specify the factors to be taken into account when setting inspection strategies and rates.*

Recommendation 5

The Review Committee recommends that:

- *the legislation includes provision for imported food to be tested specifically for the purpose of policy development by ANZFA and AQIS, with this testing, as now, to be funded by government.*

Recommendation 6

The Review Committee recommends that:

- *AQIS investigate the use of the tariff code system with a view to achieving more focussed referrals of imported food.*

Recommendation 7

The Review Committee recommends that:

- *AQIS and ANZFA allocate adequate resources to ensure operational effectiveness of the IFIP.*

Recommendation 8

The Review Committee recommends that:

- *suitably accredited laboratories be permitted to analyse imported food samples for both risk and surveillance categories of food.*

Recommendation 9

The Review Committee recommends that:

- *AQIS provide notification of results and releases to importers for all foods tested under the Imported Food Inspection Program.*

Recommendation 10

The Review Committee recommends that:

- *AQIS facilitate the development and implementation of a system to verify the validity and accuracy of test results provided by laboratories.*

Recommendation 11

The Review Committee recommends that:

- *the legislation specify that labelling conform to Australian requirements at the time of inspection or prior to the product leaving the importer's premises (which ever comes first);*
- *the legislation specify that failures for labelling should be recorded and actioned against the importer, rather than the producer;*
- *the use of Holding Orders against producers for minor labelling failures be discontinued; and*
- *AQIS, in consultation with relevant agencies and industry, develop a system to verify labelling compliance of imported foods, post border.*

Recommendation 12

The Review Committee recommends that:

- *AQIS continue the current policy of release on sampling for non-risk categorised foods.*

Recommendation 13

The Review Committee recommends that:

- *legislation be amended to permit AQIS to expand the use of certification agreements with other countries' food inspection authorities and that it build more rigour into the present certification system, by provision for*
  - *review of agreements every three years;*
  - *linking on-site audits to the country's compliance history;*
  - *improved flexibility in relation to inspection rates, including removing them from the legislation (as in Recommendation 4); and*
  - *adoption of an appropriate charging structure to minimise cross-subsidisation, while encouraging uptake of certification.*

Recommendation 14

The Review Committee recommends that:

- *legislation be amended to clearly allow AQIS to enter into compliance agreements with importers based on approved quality assurance-type arrangements;*
- *AQIS develop a compliance agreement option that includes specifications for importers, and auditing functions consistent with other inspection systems' functions conducted by AQIS;*
- *the compliance agreement option has the ability to cover the entire production chain and, where appropriate, the transport chain; and*
- *overseas suppliers be encouraged to enter into approved quality assurance arrangements with AQIS by permitting these arrangements, where appropriate, to be sourced from the importer's own QA systems.*

Recommendation 15

The Review Committee recommends that:

- *AQIS investigate and institute changes to AIMS that would ensure effective administration of IFIP, including:*
  - *databases that are accurate;*
  - *reporting modules which provide information relevant to management requirements;*
  - *reporting modules with improved flexibility to meet the need for queries and for changes to requirements; and*
  - *a system which provides information to support field activities.*

Recommendation 16

The Review Committee recommends that:

- *AQIS define, develop and use performance indicators to ensure efficient and effective program delivery.*

Recommendation 17

The Review Committee recommends that:

- *a competency-based, comprehensive training program, coordinated by a National IFIP Training Officer, be developed and delivered to all officers undertaking IFIP inspections.*

Recommendation 18

The Review Committee recommends that:

- *AQIS define, develop and use performance indicators to ensure efficient and effective program delivery.*

Recommendation 19

The Review Committee recommends that:

- *legislative sanctions should be reviewed for effectiveness, appropriateness and conformity with the Criminal Code Act 1995;*
- *the size of the penalty be struck with reference to analogous legislation (for example, State Food Acts, Quarantine Act 1908, etc), via the normal process of consultation with the drafters and the relevant areas in Attorney-General's;*
- *appropriate sanctions be developed with the introduction and extension of certification and approved quality assurance arrangements; and*
- *legislative sanctions have a proper legislative basis and suitable avenues of appeal and redress, and that they are transparent, and imposed in an accountable manner.*

Recommendation 20

The Review Committee recommends that:

- *a formal Memorandum of Understanding or service level agreement with the Australian Customs Service be established for imported foods.*

Recommendation 21

The Review Committee recommends that:

- *AQIS, together with ANZFA, reform the current consultative committee for the imported food program with a view to making it consistent with the consultative arrangements for its other programs, ensuring shared*

responsibility, transparency in decision making, broad based representation and full consultation among stakeholders.

Recommendation 22

The Review Committee recommends that:

- *AQIS develop and implement a communications strategy that:*
  - *provides all stakeholders with timely and detailed information;*
  - *provides transparency in imported foods policy and operations; and*
  - *that AQIS, in cooperation with other agencies:*
  - *develop an overview booklet for food importers containing details of all relevant agencies and their requirements; and*
  - *establish an inter-agency 'shopfront' facility to disseminate information about the responsibilities of the various government agencies involved in food importing.*

Recommendation 23

The Review Committee recommends that:

- *in line with considerations described in this Report, the Imported Food Control Act 1992 be retained, with:*
  - *timely amendment of legislation consistent with Recommendations 1, 2, 4, 5, 11, 13, 14 and 19; and*
  - *enhancement of administrative processes supporting the legislation consistent with the other recommendations in this Report.*

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

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

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

Commission and Environment Australia. Each of these bodies has responsibilities related to vehicle standards.

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. The reference committee comprised Mr Roger Mauldon (former Industry Commissioner), Mr Don Dunoon (former Chief Engineer of Nissan Australia Ltd) and Mr Lauchlan McIntosh (Chief Executive of the Australian Automobile Association).

Public Consultation

As a result of advertisements in the national press, following the announcement of the review in December 1997 by the Minister for Transport and Regional Development and the circulation of a discussion paper to three thousand stakeholders, fifty seven submissions were made to the review. The taskforce also met with a number of key stakeholders representing a broad range of interests.

A draft report was released in May 1999 for consideration and comment by stakeholders. Over one hundred submissions were subsequently received in response.

Review Recommendations

The report was forwarded to the Minister for Transport and Regional Services in August 1999. The main recommendations were that:

- the Act be retained and the object clause expanded along the following lines:

  The principal object of this Act is to establish and apply nationally uniform standards for motor vehicle safety, environmental quality and anti-theft with the aims of:

  (a) contributing to reductions in deaths and trauma from vehicle crashes;

  (b) reducing the adverse impacts of vehicle use on human health and the environment;

  (c) improving the security of vehicles; and

(d) providing information relating to safety, environmental quality and anti-theft to the Australian community.

- the Motor Vehicle Certification System continue to be administered by the Commonwealth;
- the Commonwealth, in the year 2005, review the costs and benefits of Australian jurisdictions and manufacturers moving to adopt one suite of acceptable international standards;
- full volume manufacturers be eligible to participate in the Low Volume Scheme;
- the current type approval arrangements for standard new vehicles under the Low Volume Scheme be maintained, with consideration being given to revising the current eligibility criteria to make them less subjective;
- vehicles with diesel or turbocharged engines would not be considered a different model;
- the used vehicle certification scheme, based on vehicle by vehicle approval involving registered workshops, be developed in consultation with industry;
- the importation of complete vehicles for dismantling be discontinued;
- the regulations be amended to extend the period of overseas ownership and use requirement under the personal import scheme from 90 days to 12 months and the discretionary power to accept a lesser period on compassionate grounds remain with the administrator;
- FORS re-examine other import arrangements with a view to limiting the circumstances under which conditional import requirements are placed on importers unless there are clear and efficient mechanisms in place to ensure compliance;
- the scope of the Act not be expanded to include in-service standards;
- FORS establish, in consultation with stakeholders, the services that should be subject to cost recovery and set fees based on the attributable costs for the provision of these services; and

- services which should be subject to cost recovery should include direct processing costs, research and development costs associated with new standards, safety investigations and recall monitoring activities.

Torres Strait Fisheries Act 1984 and related Acts

(Department of Agriculture, Fisheries and Forestry)

The *Torres Strait Fisheries Act 1984* (TSFA) and related Acts regulate all fishing within the Australian jurisdiction of the Torres Strait Protected Zone established by the Torres Strait Treaty between Australian and Papua New Guinea. It provides the powers for the Commonwealth to undertake fisheries management in the Torres Strait Protected Zone, the mechanism for the recovery of the Commonwealth's costs and the imposition and collection of a research and development levy.

The review commenced in February 1998. It was conducted by a committee of officials, composed of representatives of the Australian Fisheries Management Authority, Environment Australia, Thursday Island Coordinating Council, the Torres Strait Regional Authority, Torres Strait Fisheries, Queensland Commercial Fishing Organisation, Australian Seafood Industry Council, Queensland Fisheries Management Authority and the Queensland Department of Primary Industries.

Public Consultation

In March 1998, the Committee of Officials released an issues paper and sought public submissions on the issues raised in the paper. Notices were placed by the Committee in the *Weekend Australian* and *Courier Mail* on Saturday 27 March 1998 and in the *Torres News* on Thursday 9 April 1998. The issues paper was distributed to libraries under the AusInfo Library Deposit Scheme, to the members of the Torres Strait Fisheries Scientific Advisory Committee and to members of the general public. Requests were received from a range of government and industry organisations, universities and research and other educational institutions. The Committee of Officials received a submission from the Centre for Aboriginal Economic Policy, Australian National University and held discussions with several people whose views were then represented at Committee meetings.

The Secretary of the Committee of Officials also travelled to Torres Strait to canvass the views of interested and affected parties in the Torres Strait region and advise on the progress made with the National Competition Policy (NCP) review. Organisations involved during the visit included:

- Australian Fisheries Management Authority;
- Department of Foreign Affairs and Trade;
- Torres Strait Regional Authority;
- Torres Strait Island Coordinating Council;
- Queensland Commercial Fishermen's Organisation; and
- Queensland Department of Primary Industries and Energy.

A second meeting of the Committee of Officials was held in Cairns on 13 — 14 May 1998 to coincide with the Torres Strait Prawn Working Group. At this meeting, public submissions were considered, discussions with members of the public were reported to the Committee and points raised during the Secretary's visit to Torres Strait were discussed. The Committee then finalised its recommendations at a third and final meeting held in Brisbane on 23-24 June 1998.

Review Recommendation

The final report was provided to the Minister in August 1999. The final recommendations of the review are:

Recommendation 1

- *The Committee of Officials believes, it is essential that this report and all recommendations arising from the NCP review of the TSFA be put to the established consultative process for consideration and implementation or other appropriate action by the Protected Zone Joint Authority.*

Recommendation 2

The Committee of Officials recommends that the current definition of objectives as stated in Section 8 of the TSFA be replaced with the following objectives:

- To implement Australia's rights and obligations under the Torres Strait Treaty. In pursuing this objective and to reflect the spirit of

the Torres Strait Treaty, regard is to be given to the following principles:

- recognising that the traditional way of life and livelihood of traditional inhabitants need to be protected, in particular their rights to traditional fishing;
- recognising the desirability of commercial fishing to provide for economic development within the Torres Strait area;
- ensuring fisheries resources are managed in accordance with the principles of ecologically sustainable development;
- ensuring the optimum conservation, management and utilisation of the marine environment; and
- recognising the need for cooperation with Papua New Guinea in managing Torres Strait fisheries.

Recommendation 3

The Committee of Officials recommends that the distinction between Community (Torres Strait Islander Commercial Fishing) and Commercial Fishing be retained.

Recommendation 4

The Committee of Officials recommends that licences continue to be required for fishing operations wishing to exploit the fisheries of the Torres Strait.

Recommendation 5

The Committee of Officials recommends that the powers of the Minister under Section 16 of the TSFA be retained.

Trade Practices Act 1974 — sub-sections 51(2) and 51(3) exception provisions

(Department of the Treasury)

Sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* (TPA) provide for exemptions for a variety of activities concerning intellectual property rights, employment regulations, export arrangements and approved standards from many of the competition laws contained within Part IV of the TPA.

This part prohibits a number of anti-competitive trade practices including: anti-competitive agreements 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 a substantial market.

Under the *Conduct Code Agreement*, if the Commonwealth wishes to modify sections 51(2) and 51(3) of the TPA it will be necessary to have held prior consultations with the States and Territories, and to obtain a majority of votes of the governments in support of the amendment.

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

Public Consultation

In undertaking the review, interested parties had two opportunities to put forward their views. First, in response to the issues paper released in June 1998 and, secondly, to the draft report and recommendations released on 11 November 1998.

Review Recommendations

The final report was released on 21 June 1999. The NCC recommended:

- that the section 51(2)(a) exemption be retained;
- that the exemptions in section s51(2)(b)(d) and (e) be retained in their current form;
- that the exemption in section 51(2)(c) be removed from the Competition Codes in the States and Territories;
- that the exemption in section 51(2)(g) be retained in its current form;
- that the exemption in section 51(3) be retained, but amended to cover the intellectual property rights granted under the Commonwealth *Plant Breeders Rights Act 1994* consistent with the protection provided for patents, registered designs, copyright and EL rights;
- amending section 51(3) to refer to the *Trade Marks Act 1995*, including references to the registration of services as well as goods and to authorised users rather than registered users;

- that saving provisions be inserted into the *Trade Practices Act* (TPA) to preserve the effect of the current section 51(3) in relation to licences and assignments entered into before amendment of section 51(3);
- that the Australian Competition and Consumer Commission (ACCC) formulate guidelines for the assistance of industry on:
  - when intellectual property licensing and assignment conditions might be exempted under section 51(3);
  - when intellectual property licensing and assignment conditions might breach Part IV of the TPA; and
  - when conduct in relation to intellectual property that does not fall within the exemption and is likely to breach Part IV of the TPA might be authorised.
- that the ACCC aim to release the guidelines to precede or coincide with the date of affect of the amendment of section 51(3); and
- that there be equivalent amendments to the Competition Codes in each State and Territory to the amendments recommended in respect of the Commonwealth TPA.

1.2.2.3 Reviews Commenced but Not Completed

Defence Housing Authority Act 1987
(Department of Defence)

The review of the *Defence Housing Authority Act 1987* formally commenced in June 1998. It is being conducted by officials from within the Department of Defence.

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 residues in many Australian agricultural food commodities. The *National Residue Survey Administration Act 1992* and related Acts put in place statutory arrangements under which the National Residue Survey Trust Account can operate on a full cost recovery basis.

The review commenced in June 1998. It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry, the Department of Industry, Science and Resources, the Attorney-General's Department and the National Registration Authority.

Public Consultation

The NRS Secretariat sent letters to peak industry bodies that have an NRS Program and to other interested groups. Notification of the review appeared in the national press on 8 August 1998. Ten submissions were received.

A draft report was not released.

Review Progress

It is expected that the final review report will be publicly released shortly.

Pig Industry Act 1986 and related Acts

(Department of Agriculture, Fisheries and Forestry)

The *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* establishes the Australian Pork Corporation (APC), whose functions include improving the production, consumption, promotion and marketing of pigs and pork both in Australia and overseas.

The review commenced in June 1998. It is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry, the Australian Bureau of Agricultural and Resources Economics and the Department of Industry, Science and Resources.

Public Consultation

A call for submissions was advertised nationally on 22 August 1998, with a closing date of 9 October 1998. Three submissions were received (all from industry organisations or associations).

Review Progress

Work on the review has been suspended following advice from industry on a restructure of industry bodies, including the APC.

At the Annual General Meeting of the Pork Council of Australia (PCA), held on 12 March 1999, delegates discussed the current structural arrangements for the delivery of marketing and research and development services. These functions are currently delivered by separate statutory authorities — the APC and the Pig Research and Development Corporation. After some discussion, delegates passed unanimously the following resolution:

'That PCA establish a joint industry-government task force to prepare a report defining the options available for the industry to have a single industry body including R&D and marketing functions'

The resolution was incorporated into '*Looking Ahead — Australian Pork Industry Strategic Directions Statement*" as a specific strategy. The PCA has formed a working group to advance this decision.

Primary Industries Levies Acts and related Collection Acts

(Department of Agriculture, Fisheries and Forestry)

The Primary Industries Levies Acts and related collection Acts authorises 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 is being conducted by a committee of officials, composed of representatives of the Department of Agriculture, Fisheries and Forestry and the Attorney-General's Department.

Public Consultation

The review was advertised nationally on 31 October 1998. Key stakeholders were also approached directly and asked to provide input into the review. More recently, a letter inviting further submissions was

sent to approximately one hundred and thirty groups with an interest in levies and charges. Approximately 50 submissions have now been received.

Review Progress

The Review was originally scheduled for completion by 31 December 1998. Progress was delayed by the Departmental reorganisation and departure of all key staff (Chair, Secretariat officer and Committee member).

A new Committee of Officials was convened which has the following members: Ms Paulette Quang, AFFA (Chair), Mr Phillip Fitch of AFFA, and Mr Roger Mackay of the Office of Legislative Drafting, Attorney General's Department. Further public consultation was undertaken (*see* above).

It has been decided to use a consultant to undertake the public interest test. Tender documentation is being prepared and a consultant is expected to be appointed in March 2000. A final report is now scheduled to be delivered to the Minister in early July 2000.

Proceeds of Crime Act 1987 and Regulations

(Attorney-General's Department)

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

- to deprive persons of the proceeds of, and benefits derived from, the commission of offences against the laws of the Commonwealth and the Territories;
- to provide for the forfeiture of property used in, or in conjunction with, the commission of such offences; and
- to enable law enforcement authorities to effectively trace such proceeds, benefits and property.

The scheduled review of the *Proceeds of Crime Act 1987* and associated regulations was brought forward from 1998-99, and incorporated into a broader review of Commonwealth legislation relating to the forfeiture of the proceeds of crime being conducted by the Australian Law Reform Commission (ALRC).

Additional terms of reference were issued to the ALRC by the Attorney-General on 14 April 1998, as approved by the Office of Regulation Review in February, requiring that:

- the ALRC is also to inquire into and report on the additional matter of the impact of the *Proceeds of Crime Act 1987* on business; and
- in performing its functions in relation to that additional matter, the Commission is to have regard to:
  - the requirements for legislation reviews set out in the *Competition Principles Agreement*; and
  - the requirements for regulation assessment as outlined in the statement by the Prime Minister, the Hon John Howard MP, 'More Time for Business' (24 March 1997) and the document 'A Guide to Regulation' (October 1997).

The ALRC was required to report no later than 31 December 1998.

Review Progress

The Commonwealth Attorney-General tabled the report of the ALRC, *Confiscation that Counts*, on 16 June 1999. The ALRC was unable to complete the CPA review, and recommended that a working group be established to complete aspects of this review.

The working group is expected to be established in early 2000.

1.2.2.4 Reviews not Commenced

Environmental Protection (Nuclear Codes) Act 1978
(Department of Health and Aged Care)

The *Australian Radiation Protection and Nuclear* Safety (*Consequential Amendments) Act 1998* repeals the *Environmental Protection (Nuclear Codes) Act 1978*. The repeal will take effect early in 2000, after States and Territories have undertaken necessary action to preserve references to the Codes made under the Act.

The making of Codes, formally undertaken through the *Environmental Protection (Nuclear Codes) Act 1978*, will take place through the process

established by the *Australian Radiation Protection and Nuclear Safety Act 1998*. Arrangements for regulatory review are being discussed with the Office of Regulation Review. In addition, radiation protection legislation generally will be subject to a national legislation review in 2000.

Petroleum Retail Marketing Sites Act 1980 and Petroleum Retail Marketing Franchise Act 1980

(Department of Industry, Science and Resources)

The *Petroleum Retail Marketing Sites Act 1980* (Sites Act) and the *Petroleum Retail Marketing Franchise Act 1980* were both reviewed as part of the reviews of the petroleum retain market conducted by the (then) Industry Commission (1994) and the ACCC (1996). Both reviews recommended to Government that these Acts be repealed.

In July 1998, the Government announced a package of reforms for the petroleum retail market, including the repeal the Sites Act and the *Petroleum Marketing Franchise Act*. Legislation enacting this repeal was passed by the House of Representatives in November 1998. Following the disallowance of regulations made under the Sites Act by the Senate on 23 September 1999, the Government decided not to proceed with the repeal bill at that time. Progress on the implementation of the petroleum retail reform package, including the repeal of the existing legislation, is currently deferred until industry participants can agree on the future of the Sites Act.

Spectrum Management Agency (SMA) — Review of SMA's market-based reforms and activities

(Department of Communications, Information Technology and the Arts)

Development of terms of reference for the review of the Spectrum Management Agency's (now Australian Communications Authority) market based reforms and activities has been delayed pending the outcome of the review of the *Radiocommunications Act 1992* currently being conducted (*see* page 74).

1.2.3 Legislation Scheduled for Review in 1996, 1996-97 — Reform Not Finalised by 30 June 1998

1.2.3.1 Reviews Completed and Reform Outcomes Announced

Foreign Investment Policy, including associated regulation
(Department of the Treasury)

Review Panel

The review of foreign investment policy (including associated regulation) was conducted by the Commonwealth Treasury, with input from the Foreign Investment Review Board (FIRB).

There are no established terms of reference.

In announcing the review, the Government made it clear that the general preclusion of foreign interests buying developed residential real estate would continue and any approval for foreign interests to acquire vacant land for development would be on the condition that continuous development commence within 12 months of approval.

Public Consultation

A formal public consultation process has not been undertaken. However, there was public awareness that the review was being undertaken. Interested parties provided comment that was considered in the course of the review. The non-executive members of the FIRB provided considerable feedback on business and community attitudes to foreign investment policy and possible changes.

Review Report

The review was reported on each year in the Annual Report of the FIRB.

Government Response

On 3 September 1999, the Treasurer announced a number of foreign investment policy and administrative changes arising from the review. The changes will reduce notification obligations on business and streamline the administration of foreign investment policy, while continuing to ensure that foreign investment is consistent with the

interests of the Australian public. A number of changes required regulation. The enabling regulations were gazetted and took effect from September 1999. A Regulation Impact Statement was prepared for tabling with the regulations.

Revised policy statements have been prepared and widely distributed. These are available from the Treasury website
http://www.treasury.gov.au.

International Arbitration Act 1974
(Attorney General's Department)

Review Panel

The *International Arbitration Act 1974* implements international conventions that provide a voluntary framework for the settlement of international commercial disputes.

The review of the Act formally commenced in December 1996.

It was conducted by officers from within the Attorney-General's Department.

Public Consultation

Consultations were made with interested parties such as the Law Council of Australia, and the International Legal Services Advisory Council.

Review Recommendations

The review was completed in August 1997.

It concluded that the legislation is an important part of Australia's legal and economic infrastructure. It further noted that it is not regulatory legislation, and thus imposes no compliance costs or paperwork burden.

The report suggested that far from having a restrictive effect on business competition, the legislation has great potential as a means of promoting exports in the legal services sector, thus contributing to economic growth.

The only alternative to the legislative implementation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the International Convention for the Settlement of Investment Disputes, or the United Nations Commission of International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, would be for Australian businesses that engaged in international trade and commerce to rely on costly and uncertain litigation in the courts in relation to any dispute arising out of those trade and commercial dealings.

The review, therefore, recommended that the Act be retained and that it not be subject to further review under the CPA. The report of the review is available on the Attorney-General's Department Internet home page: Window on the Law, http://law.gov.au.

Government Response

The recommendations of the report have been accepted by Government.

Pooled Development Funds Act 1992

(Department of Industry, Science and Resources)

Review Panel

The *Pooled Development Funds Act 1992* establishes the Pooled Development Fund (PDF) program which is part of a range of initiatives aimed at improving the financing of small and medium sized enterprises. It operates through a tax concession.

The review of the Act commenced in March 1997.

It was conducted by a taskforce of officials, comprising representatives of the Department of Industry, Science and Resources, Treasury and the Australian Taxation Office.

Public Consultation

Public consultation was conducted through advertising for submissions in national newspapers on 11 and 14 March 1997 and by direct approach to pooled development funds and potential stakeholders (such as banks etc).

Review Recommendations

The review was completed in June 1998. The review report recommendations were:

- Continue the PDF Program, with similar incentives as at present, but with amendments as set out in the following recommendations:
- Amend the objective of the program to better reflect its rationale, to become 'to develop and demonstrate the market for patient equity capital, including venture capital, for growing small and medium sized enterprises and to provide a more competitive tax regime for such investments'.
- Permit widely-held complying Australian superannuation funds and similarly regulated overseas pension funds and limited partnerships of such funds to wholly own a PDF.
- Permit PDFs to buy back their own shares and to return capital to their shareholders, subject to a waiting period of two years for a new or merged PDF, and permit PDFs to make loans to equity investees subject to a maximum of 20 per cent of the PDF's capital base.
- Allow the PDF Registration Board to approve the acquisition of non-transferable options in investee companies as additional investments and to approve the merger of PDFs as long as no cash consideration is paid to shareholders as part of the merger, other than a bona fide dividend.
- Amend the Act to improve compliance and performance monitoring and to provide the PDF Registration Board with the power to revoke registration for non-compliance with any of the provisions of the Act.
- Change the test that the PDF Registration Board must be satisfied that an applicant for a new PDF 'can and will' take certain action in the future to one where the Board must be satisfied that the applicant is, on the evidence presented, reasonably capable of implementing the plan provided to it.
- Amend the current definition of the term 'associate' to state that it does not apply where the association did not exist prior to the persons becoming shareholders in the PDF.

- On implementing the results of this review the Department of Industry, Science and Resources should re-launch the PDF program by an appropriate publicity program directed at financial journalists, investment advisers and superannuation trustees.
- The Department of Industry, Science and Resources should include the PDF program in its purchaser/provider model of service delivery.

Government Response

The Government response to the review was made in the context of the 1999-2000 Budget. The review was made public at this time. It involves:

- Continue funding for the PDF Program, with a second review to be conducted in 2002-03.
- Amend the objective of the Program to better reflect its rationale — the objective will become 'to develop, and demonstrate the potential of, the market for providing patient equity capital (including venture capital) to small and medium sized Australian enterprises that carry on eligible businesses'.
- Permit widely-held complying superannuation funds and similarly regulated overseas pension funds and limited partnerships of such funds to wholly own a PDF.
- Permit PDFs to buy back their own shares and to return capital to their shareholders, subject to a waiting period of two years for a new or merged PDF.
- Permit PDFs to make loans to equity investees subject to a maximum of 20 per cent of the PDF's shareholders' funds.
- Allow the PDF Registration Board to approve the acquisition of non-transferable options in investee companies as additional investments.
- Allow the Board to approve the merger of PDFs as long as no cash consideration is paid to shareholders as part of the merger, other than as a bona fide dividend.
- Provide the Board with the power to revoke registration of a PDF that is not complying with any part of the Act.

- Alter the current test that the Board must be satisfied that an applicant for a new PDF ‘can and will’ take certain action in the future to one where the Board must be satisfied that the applicant is reasonably likely to be able to implement the plan it provides.
- Improve the compliance and performance monitoring aspects of the Program through more regular and comprehensive reporting requirements.
- Amend the current definition of the term ‘associate’ to state that it does not apply where the association did not exist prior to the persons becoming shareholders in the PDF.

The *PDF Amendments Bill 1999* was introduced into Parliament in late 1999.

Tradesmen’s Rights Regulation Act 1946

(Department of Employment, Workplace Relations and Small Business)

Review Panel

The review of the *Tradesmen’s Rights Regulation Act 1946* (TRR Act) commenced in December 1997.

It was undertaken by a committee of officials, comprising representatives of the Department of Employment, Workplace Relations and Small Business (Chair), the Department of Immigration and Multicultural Affairs, the Department of Finance and Administration, the National Office of Overseas Skills Recognition in the Department of Education, Training and Youth Affairs and three independent members from the community.

Public Consultation

The consultative process for the review comprised formally inviting submissions from key stakeholders, advertising for submissions from any other interested parties, meeting with key stakeholders within the metal and electrical industries, presentations to other stakeholders and circulating an interim report to key stakeholders for comment.

Key stakeholders included members of the Central Trades Committees (CTCs) established under the TRR Act, employer and employee

organisations represented on the CTCs, the Australian Chamber of Commerce and Industry, the Australian National Training Authority, state and territory training authorities, the Federation of Ethnic Communities' Councils of Australia, the Migration Institute of Australia and representatives of the Department of Employment, Workplace Relations and Small Business.

Review Recommendations

The review was completed on 18 November 1998, with a report provided to the Minister for Employment, Workplace Relations and Small Business on 9 December 1998. The report was publicly released on 24 March 1999. The main recommendations were:

- the TRR Act should be repealed and the Commonwealth Government should vacate the domestic skills recognition field, and all domestic skills recognition should be undertaken on a free competition basis directly by Registered Training Organisations (RTOs) established under the Australian Recognition Framework (ARF);
- detailed consideration should be given to the implementation arrangements and lead time for winding up activities under the TRR Act, having regard to the implementation of the ARF and the establishment of an adequate network of RTOs; and
- the Commonwealth Government should ultimately vacate the migration skills assessment field and assessments should be undertaken on a free competition basis directly by RTOs established under the ARF, subject only to the requirements for RTOs to be designated as relevant Australian authorities under the regulations to the *Migration Act 1958*.

Government Response

The Government accepted the recommendation of the review report.

The Tradesmen's Rights Regulation Repeal Bill passed the House of Representatives without amendment and was introduced into the Senate on 14 May 1999. The Senate referred the Bill to the Senate Employment, Workplace Relations, Small Business and Education Legislation Committee.

The Committee, in its report of 12 August 1999, recommended the Senate pass the Bill without amendment. However, a minority report recommended that it not proceed until a number of outstanding issues were addressed.

Efforts are continuing to resolve these issues, including discussions with key industry groups, and clear the way for the Bill's passage.

1.2.3.2 Reviews Completed, Recommendations Under Consideration

Aboriginal Land Rights (Northern Territory) Act 1976
and associated regulation
(Department of the Prime Minister and Cabinet)

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 a veto over mineral exploration (contained in Part IV).

The legislation review of Part IV (mining provisions) of the Act was originally scheduled for 1996-97. The Government decided in 1997, however, to proceed with a comprehensive review of the costs and benefits of all the provisions of this Act.

The Minister for Aboriginal and Torres Strait Islander Affairs postponed the scheduled legislation review on the basis that it should be conducted separately after the comprehensive review was completed. A detailed review report by Mr John Reeves, QC was received in August 1998. The Reeves report was referred to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, which tabled its report in August 1999.

The review of Part IV of the Act commenced in October 1998. It was conducted by Dr Manning for the National Institute of Economics and Industry. Research was commissioned by the Aboriginal and Torres Strait Islander Commission in January 1999.

Public Consultation

Submissions were received from the major stakeholders, a statistical survey was conducted, an informal meeting of the major stakeholders was held, a draft report was circulated to major stakeholders and comments were taken into account.

Review Report

The review report was publicly released in August 1999. It contains twelve recommendations addressing the processes in Part IV for obtaining mining and exploration permits. These are:

1. The right of refusal should be maintained.
2. Restrictions on the content of agreements should be removed, leaving this to be governed by general commercial law.
3. Land Councils and the DME should jointly draft, publish and regularly update a detailed manual for applicants for ELs on Aboriginal land, including specification of topics usually subject to negotiation and an indication of outcomes likely to be expected by TOs.
4. A representative of DME should be able to attend meetings, at the invitation of the applicant or the Land Council, as an observer and at the expense of DME or the applicant, on the same conditions as the representative of the MATSIA.
5. Consent to negotiate should expire on refusal of an ELA, but the applicant may be given permission to re-apply at the Northern Territory Minister's discretion.
6. Where, following a refusal, there has been a genuine change of applicant, and DME and the Land Council (acting in the interests of the TOs) are agreed that negotiation should proceed, the Northern Territory Minister should have power to issue consent to negotiate at any time.
7. Land Councils should budget and account for mining negotiations and mining contract administration as a discrete cost centre, covering:
   (a) all expenditures on mining negotiation and contract administration;

(b) budgetary allocation from their own funds; and

(c) all industry contributions, which are to be treated as additional to (b).

Industry contributions will include:

(a) contributions from applicants;

(b) contributions from industry bodies or government organisations such as DME and Department of Industry Science and Resources; and

(c) earnings from consultancies etc. undertaken by the mining personnel of the Land Council.

Land Councils with less than six outstanding ELAs, and any others determined by the MATSIA, should be exempt from this requirement.

8. If a Land Council believes that an applicant is postponing negotiation to an extent which threatens the achievement of negotiation deadlines, it should inform DME, with reasons. DME should then consult with the applicant, and if it comes to the same view as the Land Council, and the MATSIA agrees, it should have power to withdraw consent to negotiate.

9. Deadlines should be expressed in terms of consultation seasons, that is, clear periods including (a) an initial period of 3 months (b) 14 months beginning after the end of period (a) and including only time between April 15 and November 14 each year (or otherwise as determined for particular regions by the Land Council with the consent of the MATSIA), plus a final period of 2 months. The existing provisions for the MATSIA to extend the deadlines should remain.

10. The existing deeming provision when a Land Council and applicant exceed the negotiation period should be replaced by a deemed withdrawal of consent to negotiation.

11. Land Councils should have power to delegate approval of agreements to their executive or regional committees. The existing requirement of final approval by the MATSIA should remain.

12. Land Councils should be able to set mandatory user charges, to recover all costs directly attributable to each particular mining

negotiation. Standard charges should be published, but should be negotiable with applicants. Where applicants believe that charges are excessive, they should have the right of appeal under the EL conciliation and arbitration provisions of the Act.

Government response

The government will respond to this report as part of its response to the Reeves Report on the *Land Rights Act* and the report of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs on the recommendations of the Reeves report.

1.2.3.3 Reviews Commenced but not Completed

Bills of Exchange Act 1909
(Department of the Treasury)

Review Panel

A key aim of the review is to examine the effectiveness, including the cost effectiveness, of the *Bills of Exchange Act 1909* in the context of the impact of electronic commerce on the trading of money market securities, including negotiable instruments, covered by the Act.

The review of the *Bills of Exchange Act* commenced in April 1997.

It is being undertaken by a taskforce of officials, comprising representatives of the Commonwealth Treasury, the Reserve Bank of Australia and the Attorney General's Department.

Review Progress

A discussion paper is expected to be circulated for public comment in early 2000.

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

The legislation establishes regulatory arrangements that provide for radiofrequency spectrum use and management in Australia.

The review of the *Radiocommunications Act 1992* and related legislation commenced in May 1997.

It is being undertaken by a taskforce of officials, drawn from the Department of Communications, Information Technology and the Arts, the Australian Communications Authority, the Department of Transport and Regional Services and the Department of Defence, in conjunction with an independent reference group of experts.

The reference group provides expertise in the areas of administrative law, economics and radio spectrum management. It is composed of Mr Tom Sherwin, AO (former Australian Government Solicitor, former chair of the National Crime Authority), Professor Max Neutze, AO (Australian National University), Professor Henry Ergas (Auckland University), Professor Reg Coutts (Adelaide University) and Mr John Burton (KPMG).

Public Consultation

The taskforce advertised nationally for submissions in July 1997, and wrote to over one hundred organisations and individuals inviting submissions. Forty seven responses were received. Meetings were also conducted with a wide range of interested parties.

Following comments from the reference group, a discussion paper was circulated to more than 250 individuals and industry bodies in December 1998. More than fifty responses were received, and further meetings held with industry.

Review Progress

The review report is currently being drafted for submission to Government in 2000.

1.2.3.4 Reviews not Commenced

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

This review had not commenced by 30 June 1999.

Migration Act 1958 — sub-classes 676 and 686 (tourist visas)
(Department of Immigration and Multicultural Affairs)

On 17 June 1998, the Minister for Immigration and Multicultural Affairs sought permission from the Prime Minister and the Treasurer to remove the review of sub-classes 676 and 686 of the *Migration Act 1958* (tourist visas) from the CLRS on the basis that:

- the Joint Standing Committee on Migration will report by June 1999 on entry arrangements for the Olympic Games. The terms of reference will address the issue of existing temporary arrangements; and
- in the 1998 Budget, the Government introduced a $50 visitor visa charge to take effect from 1 July 1998. The full impact of the charge is not expected to be felt until at least 1999-2000, making a review inappropriate at this time.

This matter has not yet been finalised, although deletion is anticipated.

1.2.4 Legislation Scheduled for Review in 1998-99 — Deferred

This section identifies those Acts originally scheduled for review in 1998-99, for which the review process has been deferred.

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

A major review was initiated by the horticultural industry, the Australian Horticultural Corporation and the Horticultural Research and Development Corporation in 1998, with a view to creating a single entity delivering both marketing and research and development services. The Horticultural Industry Alliance Steering Committee was subsequently formed to drive the process.

As only two regulations under the *Australian Horticultural Corporation Act 1987* relevant to dried fruit remain on the CLRS, and given the existence of this industry review, the national competition policy review of dried vine fruit legislation has been deferred until the broader industry review is completed (scheduled for August 2000).

The *Dried Vine Fruits Equalization Act 1978*, the *Dried Sultana Production Underwriting Act 1982* (upon repeal) and the *Dried Vine Fruits Legislation Amendment Act 1991* (upon repeal) have been deleted from the review.

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

The review of the Export Control (Unprocessed Wood) Regulations under the *Export Control Act 1982* has been deferred to 1999–2000, as a consequence of amendments to these regulations that, in conjunction with the making of new regulations (the Export Control Regulations and Regional Forest Agreements), implement a process to progressively remove export controls on unprocessed wood from Australian plantations and native forests.

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

The review of the *Hazardous Waste (Regulation of Exports and Imports) Act 1989* was deferred for review in 1999–2000. This recognised that recent amendments to the legislation had not yet become fully operational. It was agreed their impact would be better assessed at a later date.

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

In recognition of the changes taking place to implement the Corporate Law Economic Reform Program (CLERP), the review of the *Insurance (Agents and Brokers) Act 1984* has been deferred until 1999-2000.

The arrangements covered by this Act are currently being examined in the context of a general review of financial intermediary licensing being undertaken as part of CLERP.

The CLERP 6 consultation paper entitled *Financial Products, Service Providers and Markets — An Integrated Framework*, released in March 1999,

proposed harmonised licensing arrangements for all financial service providers. This would involve replacing the current arrangements for insurance agents and brokers with a single licensing regime. Under existing arrangements agents are not licensed and brokers are registered.

The scheduled review of the Act has been deferred until the CLERP review is complete, although it is likely that the Act may be repealed as a result of the CLERP 6 reforms. It is expected that draft legislation arising from the CLERP review will be released for public exposure by the end of 1999.

Occupational Superannuation Standards Regulations Applications Act 1992,
Superannuation (Excluded Funds) Taxation Act 1987,
Superannuation (Financial Assistance Funding) Levy Act 1993,
Superannuation Industry (Supervision) Act 1993 and the
Superannuation (Excluded Funds) Supervisory Levy Imposition Act 1991,
Superannuation (Resolution of Complaints) Act 1993
(Department of the Treasury)

The scheduled review of the above legislation relating to superannuation has again been deferred until 1999-00, on the grounds that further amendments are being made to the legislation (in particular, the *Superannuation Industry (Supervision) Act 1993*), and there would be little to be gained by a review pending these amendments. It is anticipated that the bulk of the amendments will be in place by the second half of 2000.

As a result of a decision of the Federal Court, which held that the operative parts of the *Superannuation (Resolution of Complaints) Act 1993* were invalid under the Constitution, it was considered premature to proceed with the scheduled review until consideration of the decision of the High Court. The High Court handed down its decision in June 1999, which held that the operative parts of the Act are Constitutionally valid. In light of this decision, the review of the Act can now proceed.

Prices Surveillance Act 1983
(Department of the Treasury)

The review of the *Prices Surveillance Act 1983* has been deferred to 1999-2000.

1.2.5 Legislation Added to the CLRS in 1998-99

This section identifies legislation included on the CLRS within the period 1998-99, although not necessarily scheduled for review within this period.

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

A review of the *Disability Discrimination Act 1992* has been scheduled to commence in 1999-2000.

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

The review of the *Marine Insurance Act 1909* was scheduled to commence in 1998-99. It has not yet commenced.

1.2.6 Legislation Deleted from the CLRS in 1998-99

This section identifies legislation deleted from the CLRS during the period 1998-99.

Financial Corporations Act 1974
(Department of the Treasury)

The *Financial Corporations Act 1974* was scheduled for review in 1998-99, however, the Government agreed to its deletion from the CLRS on the grounds that it had already been reviewed as part of the Wallis Inquiry process.

Moomba-Sydney Pipeline System Sale Act 1994 — Part 6 (access provisions)
(Department of Industry, Science and Resources)

The repeal of Part 6 of the *Moomba-Sydney Pipeline System Sale Act 1994* was provided for in the *Gas Pipelines Access (Commonwealth) Act 1998*, and took effect with the commencement of the South Australian *Gas Pipelines Access (South Australia) Act 1997* and corresponding legislation in New South Wales.

Prawn Boat Levy Act 1995
(Department of Agriculture, Fisheries and Forestry)

The *Prawn Boat Levy Act 1995* was repealed in 1998 under the *Fisheries Legislation Amendment Act No. 1 1998*.

World Heritage Properties Conservation Act 1983
(Department of Environment and Heritage)

The *World Heritage Properties Conservation Act 1983* was repealed in 1999 under the *Environmental Reform (Consequential Provisions) Act 1999*.

1.2.7 Clarification regarding specific scheduled reviews

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. To ensure the legislation review requirements have been fully met, the Department of Agriculture, Fisheries and Forestry will conduct a further review of those elements of the Act (if any) that were unchanged following the Nairn Review and that restrict competition. The optimal timing for the conduct of this review is currently being examined, reflecting the introduction of new legislative arrangements emerging from the original review.

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 Commonwealth legislation have been incorporated into national reviews.

Review Panel

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

The *Agricultural and Veterinary Chemicals Act 1994* was originally scheduled for review in 1998-99. However, on 24 March 1997, the Prime Minister, with the agreement of all jurisdictions, brought forward the review to 1997-98, as part of the Commonwealth Government's response to the report by the Small Business Deregulation Taskforce.

The 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 this review, New South Wales, South Australia and the Northern Territory are conducting their own review of control of use legislation to be aggregated with the national review.

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

A public tender process conducted during June/July 1998 resulted in the selection of PriceWaterhouseCoopers and Francis Abourizk Lightowlers to jointly undertake the review, in accordance with Victoria's competition policy guidelines. Victoria is providing the secretariat for the review.

The consultants are conducting the review under the guidance of a project team, comprising representatives of the Victorian Department of Natural Resources and Environment, the Commonwealth Department of Agriculture, Fisheries and Forestry and the Western Australian Department of Agriculture.

The project team is responsible for the overall management of the review, under the guidance of a steering committee (the membership of which is specified in the terms of reference).

The terms of reference for the review were agreed to on 4 June 1998, with the consultants required to report on the review findings to the Commonwealth, State and Territory Ministers for agriculture/primary industries by November 1998.

Public Consultation

An issues paper was released for public comment on 31 August 1998, with comments to be provided to the consultants by 30 September 1998.

Review Recommendations

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

The Standing Committee on Agriculture and Resource Management (SCARM) publicly released the report in March 1999.

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations

Restriction on competition	Recommendations
The registration monopoly: The adoption by all States and Territories of the Agvet Code as law in their jurisdiction and the adoption of the National Registration Authority for Agriculture and Veterinary Chemicals (NRA) to administer the Agvet Code creates a monopoly by establishing a single provider of registration decisions in the NRA (the single provider). A legislative monopoly is a restriction on competition.	1. *The Review Team recommends retention of a single provider of registration decisions in Australia.*
Low risk chemicals: The ambit of the Scheme and the registration process does not significantly differentiate between categories of risk, leading to producers of low risk chemicals incurring largely the same cost as high risk chemicals. There may also be chemicals inappropriately included in the Scheme. The imposition of any unnecessary compliance costs (and fees) on manufacturers of low risk chemicals restricts competition by discouraging them from entering or remaining in the market. This issue is of particular concern for small businesses.	2. *The Review Team recommends that the Agvet Code be altered to specifically provide for the identification of low risk chemicals, hence enabling potentially faster registration. This would enable unnecessary registration cost burdens on the manufacturers of these chemicals to be removed. The Review Team expects that for reasons of practicality the preferred outcome is likely to entail a form of pre-categorisation of chemicals.* 3. *The Review Team recommends that sections 4 and 5 of the Agvet Code be amended to provide guiding principles for the inclusion or exclusion of chemicals by regulation. These principles should emphasise the relevant risks that the Scheme was developed to manage, such as the risks arising from chemical use in agricultural and related activities.*

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations (continued)

Restriction on competition	Recommendations
Assessment services: The NRA purchases its environmental, health and Occupational Health and Safety assessments solely from the relevant Commonwealth bodies: Environment Australia, the Therapeutic Goods Administration (TGA) and National Occupational Health and Safety Commission (NOHSC). There is no legislative requirement that restricts the NRA to purchase assessment services from these bodies. However, there is a practice of doing so which creates a restriction on competition by denying others entry into the market for the provision of these assessment services.	4. *The Review Team recommends that the NRA establish service agreements with its current suppliers and purchase assessment services on a fee for service basis.* 5. *The Review Team recommends that the NRA both accept alternative suppliers of assessment services and actively alert likely providers of this fact.*
Efficacy review: Section 14(3)(f) of the Agvet Code is interpreted to require the NRA to satisfy itself that a chemical product's claimed efficacy is both true and appropriate. This involves regulation of product standards and is therefore a restriction on competition.	6. *The Review Team recommends that Section 14(3)(f) of the Agvet Code be amended to specify that efficacy review extends only to ensuring that the chemical product meets the claimed level of efficacy on the label.*
Full cost recovery: The operations of the NRA are essentially funded through application (or registration) fees, levies and annual renewal fees. While application fees are intended to be cost reflective (user pays), the levy and renewal fee burden varies depending upon the level of sales of each agvet chemical. This two pronged approach to funding the NRA creates two potential restrictions on competition: ▪ the structure of the levy and the annual renewal fee results in discrimination between firms in respect of their contribution; and	7. *The Review Team recommends that the levy be changed to a simple flat rate levy (on sales as at present) with no exemptions or caps. The annual renewal fee should be abolished and a nominal minimum levy liability (per registered product) set instead.* 8. *The Review Team recommends that application and other registration service fees be cost reflective.*

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations (continued)

Restriction on competition	Recommendations
▪ application fees, being up-front fees, can pose a significant hurdle to smaller businesses and may discourage their involvement in the industry.	
Manufacturer licensing: Part 8 of the Agvet Code contains provisions that require manufacturers of agricultural or veterinary chemicals to be licensed, unless the manufacture is of exempt products only. At present, manufacturers of agricultural chemical products are included among the exemptions. Licensing is a restriction on competition because it limits entry to the industry only to those holding a licence. Licensing may also restrict competition to the extent that it prescribes how manufacturers are to conduct their operations.	9. *The Review Team recommends the retention of licensing of veterinary chemical manufacturers. However, GMP should be optional for manufacturers of low risk veterinary chemicals, in line with the introduction of a low risk category of registration.* 10. *The Review Team recommends that the Agvet Code be amended to remove the present (albeit exempted) requirement for licensing of agricultural chemical manufacturers until the case for such an extension is made.*
Data protection: When a chemical is reviewed, the NRA may call upon a person, for example the manufacturer, to provide certain information regarding that chemical to support the continuation of registration. In certain circumstances the data is protected, requiring third parties to compensate the originator should they wish to benefit from the data (for example, to continue to register their image product). Data protection imposes a cost on persons wishing to utilise the data, in that they must pay compensation, and therefore is a *prima facie* restriction on competition. However, the absence of data protection may also restrict competition because the ability to free ride on information will reduce the incentive to generate it in the first place.	11. *The Review Team recommends that the compensation process provisions of the Agvet Code be modified to adopt the procedures and principles for determining third party access pricing under the various Codes in operation under Part IIIA of the Trade Practices Act.*

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations (continued)

Restriction on competition	Recommendations
Off-label use: A combination of provisions in the Agvet Code and the various state control of use legislation authorise off-label use of agvet chemicals. The manner in which off-label use can occur varies markedly between the four states under review. The inconsistency restricts competition between growers with different degrees of access to off-label use and may undermine the Scheme.	12. *The Review Team recommends that Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) establish a control of use task force to develop a nationally consistent approach to off-label use. (Whilst off-label use would be the highest priority for this task force there are a number of other control of use matters to address eg: on-label use).*
Veterinary surgeons exemption: Veterinary surgeons hold various exemptions from provisions relating to both the supply and use of agvet chemicals. The exemption varies between the four states under review. The exemption for veterinary surgeons constitutes a restriction on competition because of the discriminatory nature of the exemption between veterinary surgeons and all other persons. This requires agvet chemical users to incur the cost of a veterinary surgeon to make use of certain agvet chemicals. The variation in the operation of certain exemptions between states also imposes a restriction on competition in that it may afford users in some jurisdictions advantages over users in other jurisdictions.	13. *The Review Team recommends the retention of the veterinary surgeon exemption in the Agvet Code.* *14. The Review Team recommends that Tasmania's control of use legislation be amended to limit the exemption afforded to pharmaceutical chemists to those circumstances where they are acting under the instructions of a veterinary surgeon.* 15. *The Review Team recommends that Victoria and Queensland's control of use legislation be amended to remove the exemption afforded to veterinary surgeons in respect of agricultural chemicals.* *16. The Review Team recommends that the ARMCANZ control of use task force address the veterinary exemption.*

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations (continued)

Restriction on competition	Recommendations
Control of use licensing: Each state requires agvet chemical spray contractors to hold various forms of business and/or occupational licences or accreditations. Licensing may pose a barrier to entry through training costs and licence fees, and is therefore a restriction on competition. The variation between competency and other requirements in each State also creates a restriction on competition in that it can constrain the ability of persons to operate across state borders.	17. *The Review Team recommends that an appropriate business licensing system for agvet chemical spraying businesses (ground or aerial) would entail no more than:* ▪ *the relevant State agvet authority issuing a licence; subject to* ▪ *maintenance of detailed records of chemical use;* ▪ *using only appropriately licensed persons to perform application activities (as below); and* ▪ *the provision of infrastructure to enable persons to operate at the appropriate competency level.* *18. The Review Team recommends that an appropriate occupational licensing system for persons undertaking agvet chemical spraying (ground or aerial) for fee or reward would entail no more than:* ▪ the relevant State agvet authority issuing a licence; subject to ▪ holding an accreditation of appropriate competencies (including scope for provisional accreditation of new employees); ▪ operating at that competency level; and ▪ working only for a licensed business (as above). 19. *The Review Team recommends that the States and Territories examine the scope to coordinate their business and occupational licensing requirements, specifically the scope to standardise accreditations and the scope to recognise interstate licences. This would be an appropriate matter for the ARMCANZ control of use task force.*

Table 1: National Competition Policy Review of Agricultural and Veterinary Chemicals Legislation: Review Recommendations (continued)

Restriction on competition	Recommendations
	20. The Review Team recommends the retention of the exemption from business and occupational licences (but not generic controls) for persons spraying agvet chemicals on their own land (this exemption is mainly aimed at primary producers).

Government Response

SCARM 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.

The draft response was considered by the SWG in October 1999, and largely signed-off. Minor refinements were subsequently made and the draft response sent by the Working Group to the Regulatory Reform Committee of COAG in mid January 2000. Following comment from the Committee, the response will be provided to ARMCANZ and then COAG for consideration. ARMCANZ will be considering the recommendation to form a control of use Task Force (Recommendation 12) at its forthcoming meeting in early March.

Development of the Commonwealth's input to the inter-governmental response has involved high level discussions with the Department of Health and Aged Care, Environment Australia, Department of Employment, Workplace Relations and Small Business, Treasury, the Department of the Prime Minister and Cabinet and the National Registration Authority. The Commonwealth response was provided to the Victorian Secretariat, which prepared the draft response considered by the SWG.

Mutual Recognition Act 1992

(Department of the Prime Minister and Cabinet, Department of Education, Training and Youth Affairs, Department of Industry, Science and Resources)

The review of the *Mutual Recognition Act 1992* commenced in October 1997. It was conducted by a working group of the Council of Australian Governments (COAG) Committee on Regulatory Reform (CRR), comprising representatives from the Commonwealth, New South Wales, Queensland (Chair) and Western Australia.

The Mutual Recognition Agreement (MRA) establishes a national scheme under which goods that 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.

The MRA required that it be reviewed in its fifth year of operation (1997-98). In addition, several jurisdictions had scheduled NCP reviews of their mutual recognition legislation.

As the MRA is a national scheme, all jurisdictions agreed to a national legislation review and to implement legislation that would incorporate the findings of the MRA and legislation reviews.

Public Consultation

The working group advertised for public submissions in the national press, receiving over one hundred submissions.

Review Report

The review was conducted between October 1997 and July 1998. The review report is available on the Internet at http://www.dpmc.gov.au.

The report noted that the scheme is generally working well. It made thirty recommendations addressing the operation of different aspects of the MRA. Significantly, it recommended that jurisdictions endorse the continued operation of the MRA.

Government Response

On 14 November 1998, the Prime Minister wrote to Premiers and Chief Ministers as well as the Minister for Education, Training and Youth

Affairs and the Minister for Industry, Science and Resources, seeking their endorsement of the recommendations arising from the review.

All jurisdictions generally support the review recommendations, except for Queensland, which has reserved its position in relation to recommendations six and nine. It also has concerns about several other recommendations. Victoria has expressed concern about recommendations 9, 12 and 24.

A CRR working group was established in May 1999 to:

- further consider the recommendations that jurisdictions have concerns about;
- consider issues that the report recommended CRR consider further; and
- examine implementation issues relating to the recommendations.

It will report back to CRR as particular matters are resolved.

1.3.1 Other National Reviews with Commonwealth Involvement

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

Drugs, Poisons and Controlled Substances Legislation

The State, Territory and Commonwealth Governments have commissioned a review to examine legislation and regulation pertaining to drugs, poisons and controlled substances. Ms Rhonda Galbally has been appointed as the independent chair of the review.

This legislation forms part of a broader public health framework that seeks to promote:

- the public health and safety from dangerous substances; and

- good health through appropriate use of drugs, poisons and controlled substances.

It relates to State and Territory regulatory controls over drugs for human and veterinary use, agricultural and veterinary chemicals and household chemicals.

Public Consultation

The Chair is consulting widely with stakeholders. Submissions to the review were sought by 28 October 1999. These submissions will inform the development of a discussion paper to be released for public comment in February 2000.

Food Acts

On behalf of the State and Territory Health Departments, the Australia New Zealand Food Authority (ANZFA) coordinated a NCP review of the Food Acts of each State and Territory Food Act, and the new Food Laws to be implemented by all Australian jurisdictions.

The Food Regulation Review Committee was chaired by Dr Blair, and comprised representatives of industry, consumers and government.

The timely adoption of nationally uniform Food Acts is important to the development and implementation of several food reforms being developed by ANZFA in collaboration with the States and Territories and New Zealand, namely:

- implementation and uniform interpretation and enforcement of the Australia New Zealand Food Standards Code by 1 January 2000;
- implementation of food hygiene reforms;
- the development of a national surveillance system; and
- the requirement to have all anti-competitive legislation reviewed and reforms implemented by 2000.

This project is linked with the Australian National Public Health Partnership legislation reform process.

Written submissions were sought from the public. Public hearings and focus groups and workshops were also organised. A draft report was released in May 1998 for public comment.

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available. The report recommends major legislative, procedural and structural reforms intended to produce a more efficient and effective food regulatory system, covering primary production, processing, retailing and catering, with improved consumer safety and a reduced regulatory burden on industry.

A regulatory impact statement (RIS) consequent on the NCP review of the Food Law has been completed. The RIS will shortly be submitted to the Australia New Zealand Food Standards Council for endorsement. It will also be sent to the Council of Australian Governments as part of the Food Safety Reform Package.

Pharmacy Regulation

A national review to examine State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits, was formally agreed to by all governments on 1 May 1998.

On 19 June 1999, the Commonwealth Minister for Health and Aged Care announced the appointment of Mr Warwick Wilkinson, AM to conduct the review. He is assisted in the conduct of the review by a secretariat based in the Department of Health and Aged Care. A steering group comprising a representative of each jurisdiction participating in the review has been established to provide advice and guidance to the review.

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 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.

Public Consultation

The Review has advertised for and received around 100 submissions from interested individuals and organisations. There have also been consultations with key stakeholders.

Review Progress

In November 1999, the review presented a preliminary report to the Prime Minister. The review made a number of findings and recommendations, some of which will be developed further in the final report.

The report made a number of key recommendations:

- *Ownership of Pharmacies* — the review concludes that there is a net public benefit from existing requirements that, in general, pharmacies should be owned by pharmacists either individually, in partnership or in bodies corporate owned by pharmacists. Existing legislation restrictions on the number of pharmacies in which a pharmacist can have a proprietorial interest are no longer justifiable restrictions on competition.
- *Location of Pharmacies* — the review concluded that restriction on PBS approval for new pharmacy sites and the relocation of an existing pharmacy from one pharmacy to another are significant restrictions on competition. Accordingly, these restrictions should be removed and replaced with processes that are more efficient.

- *Registration of Pharmacists* — this issue will be further considered in the review's final report. However, the registration of pharmacists and specification of entry standards based on minimum proficiency to practice unsupervised are justifiable restrictions on competition and should be retained.

The final report is expected to be released in early January 2000.

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 evidence 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 *More Time for Business* policy statement (March 1997), prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Commonwealth regulation that imposes costs or confers benefits on business.

1.4.1 Regulation Impact Statements

In order to make transparent the possible impact of proposed legislation on competition, a RIS must be prepared for all proposed new and amended Commonwealth regulation with the potential to restrict competition, or impose costs or confer benefits on business. This Statement must assess the costs and benefits of alternative means of fulfilling the relevant policy objective.

The ORR is responsible for providing guidance and training to Commonwealth Departments and agencies in preparing a RIS, and for assessing its technical adequacy. RIS requirements are detailed in the ORR handbook *A Guide to Regulation*. A second edition of this publication was released in December 1998, and is available from the ORR.

Box 6: What is the purpose of the RIS process?

The RIS process is intended to ensure that a comprehensive assessment of all policy options, and the associated costs and benefits, is undertaken. This information is then used to inform the decision making process. In this regard, it provides a comprehensive checklist that outlines public policy decision making best practice.

This process is to be used to develop the appropriate policy solution, not to construct a justification after the event.

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

The Commonwealth'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 1997-98*.

This report notes that, for the period 1997-98, 104 bills were introduced into Parliament for which a RIS was required. A RIS was prepared in 97 per cent of cases. However, in only 38 per cent of cases was a RIS included in the documentation provided to the final decision-makers. For subordinate legislation, of the 338 relevant instruments, a RIS was prepared in less than 50 per cent of cases.[15]

15 Productivity Commission (1998), *Regulation and its Review 1997-98*, AusInfo, Canberra, p.xvii.

1.4.2 Legislation Enacted since 1 July 1998 that may Restrict Competition

Those Commonwealth Acts introduced in the period 1 July 1998 to 30 June 1999 identified by the ORR as having the potential to restrict competition are identified in Table 2. The potential impact of these Acts varies from relatively minor to significant. The actual impact will depend on how the various legislative provisions are utilised.

Table 2: Potentially Anti-Competitive Commonwealth Legislation Introduced Between 1 July 1998 and 30 June 1999

Commonwealth Acts
Broadcasting Services Amendment Bill (No. 1) 1999
Education Services for Overseas Students (registration of Providers and Financial Regulation) Amendment Bill 1998 (1999)
Ozone Protection Amendment Bill 1998
Radiocommunications Legislation Amendment Bill 1999
Regional Forest Agreements Bill 1998
Space Activities Bill 1998
Telstra (Transition to Full Private Ownership) Bill 1998

Legislation Review Terms of Reference

Aboriginal Land Rights (Northern Territory) Act 1976

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) was included in the Commonwealth Government's Legislation Review Schedule examining legislation that restricts competition.

1. Part IV of the Act is referred to the Review Body for evaluation and report within three months of the commencement of the review. The Review Body is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Review Body is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business (including small business), and efficient resource allocation; and

   (c) compliance costs and paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Review Body is to have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and the Government's regulation impact statement guidelines. The report should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that Part IV of the Act seeks to address;

(b) clarify the objectives of Part IV of the Act;

(c) identify whether, and to what extent, Part IV of the Act restricts competition;

(d) identify relevant alternatives to part IV of the Act, including non-legislative approaches that improve free competition;

(e) identify the different groups likely to be affected by Part IV of the Act and alternatives;

(f) analyse and, as far as practical, quantify the benefits, costs and overall effects of Part IV of the Act and alternatives identified in (d);

(g) list the individuals and groups consulted during the review and outline their views and what stakeholding they enjoy;

(h) determine a preferred option for regulation, if any, in this area in light of the objectives set out in (2); and

(i) examine mechanisms for increasing overall efficiency, including minimising the compliance costs and paper burden on small business, of Part IV of the Act, and where it differs, the preferred option.

4. In undertaking the review, the Review Body is to advertise the review in National newspapers and the Northern Territory News, consult with key interest groups and affected parties, taking into account relevant outcomes of the Reeves review, and publish a report.

Agricultural and Veterinary Chemicals Legislation

The review will examine the case for reform of any legislative restrictions on competition contained in Agricultural and Veterinary Chemicals Legislation, including subordinate legislation, as listed in Appendix 2, in accordance with the Victorian Government's Guidelines for the Review of Legislative Restrictions on Competition, including those provisions relating to national reviews. With the concurrence of

COAG, New South Wales, South Australia and the Northern Territory will be undertaking separate reviews of their respective control of use legislation.

In particular, the review will:

- clarify the objectives of the legislation;
- identify the nature of the restrictions on competition;
- identify and consult with the groups likely to be affected by the legislation listed at Appendix 2;
- analyse the likely effect of the restriction on competition and on the economy in general;
- examine the need to promote greater integration of the different regulatory restrictions;
- assess the net public benefit of each restriction;
- identify relevant alternatives to the legislation, including non-legislative approaches; and
- assess the net public benefit of the alternatives.

Reform Options

Without limiting the scope of the review, the review should specifically consider whether particular provisions of the legislation listed in Appendix 2 restrict competition including:

- the requirement for Agvet products to be registered (permitted/exempted) before sale or distribution;
- the requirement for chemical producers to pay fees for registration assessment, charges for annual renewal of registration, and annual levies based on value of registered products sold and the basis for setting these fees, charges and levies;
- the requirement for manufacturers of veterinary chemicals to be licensed in order to manufacture such products; and
- the requirement for Agvet chemicals to be subject to State/Territory control of use regulation and the nature and extent of such regulation.

Agricultural and Veterinary Chemicals Act 1994 and Determination (under section 23)

Agricultural and Veterinary Chemical Products (Collection of Levy) Act 1994

Agricultural and Veterinary Chemical Products Levy Imposition (Customs) Act 1994 and Regulations

Agricultural and Veterinary Chemical Products Levy Imposition (Excise) Act 1994

Agricultural and Veterinary Chemical Products Levy Imposition (General) Act 1994

Agricultural and Veterinary Chemicals (Administration) Act 1992 and Regulations

Agricultural and Veterinary Chemicals Code Act 1994 and Regulations and Order

Agricultural and Veterinary Chemicals (Victoria) Act 1994 and Regulations (Vic)

Agricultural and Veterinary Chemicals (Western Australia) Act 1995 and Regulations (WA)

Agricultural and Veterinary Chemicals (Tasmania) Act 1994 and Regulations (Tas)

Agricultural and Veterinary Chemicals (NSW) Act 1994 and Regulations (NSW)

Agricultural and Veterinary Chemicals (South Australia) Act 1994 and Regulations (SA)

Agricultural and Veterinary Chemicals (Queensland) Act 1994 and Regulations (Qld)

Agricultural and Veterinary Chemicals (Northern Territory) Act 1994 and Regulations (NT)

State Control of Use Legislation

Victoria

Agricultural and Veterinary Chemicals (Control of Use) Act 1992; Regulations 1996 and Hormonal Growth Promotants Regulations 1993

Queensland

Agricultural Chemicals Distribution Control Act 1966

Agricultural Chemicals Distribution Control Regulations 1998

Chemical Usage (Agricultural and Veterinary) Control Act 1988

Chemical Usage (Agricultural and Veterinary) Control Regulations 1989

Western Australia

Agriculture Bill drafting instructions — sections dealing with resource protection

Veterinary Preparations and Animal Feeding Stuffs Act 1976 and Regulations

Agricultural Produce (Chemical Residues) Act 1983 and Regulations

Aerial Spraying Control Act 1966 and Regulations

Health (Pesticides) Regulations 1956

Agriculture and Related Resources Protection (Spraying Restrictions) Regulations 1979

Tasmania

Agricultural and Veterinary Chemicals (Control of Use) Act 1995
Agricultural and Veterinary Chemicals (Control of Use) Regulations 1996 and Orders

Australia New Zealand Food Authority Act 1991

1. The *Australia New Zealand Food Authority Act 1991* (the Act) is referred to the Food Regulation Review Committee for evaluation and report by 30 June 1998. The Food Regulation Review Committee is to focus on those parts of the Act which restrict competition, or which impose costs or confer benefits on business. (The Food Standards Code is being reviewed over a five year period ending in December 1999 and this review will be expanded (with separate terms of reference) to address the national competition principles.)

2. The Food Regulation Review Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-regulatory approaches;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on public health and safety, the environment, welfare and equity, occupational health and safety, economic development, consumer interests, the competitiveness of business including small business, efficient resource allocation and international obligations; and

   (c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Food Regulation Review Committee shall apply the legislation review principles incorporated in the *Competition Principles Agreement* and shall have regard to the analytical requirements for regulation assessment applied by the Commonwealth. The report of the Food Regulation Review Committee should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

   (b) clarify the objectives of the Act;

   (c) identify whether, and to what extent, the Act restricts competition;

   (d) identify relevant alternatives to the Act, including non-legislative approaches;

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and its alternatives;

(g) list the individuals and groups consulted during the review and outline their views;

(h) determine a preferred option(s) for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4. In undertaking the review, the Food Regulation Review Committee is to advertise in Australia and New Zealand, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Food Regulation Review Committee report, the Parliamentary Secretary to the Minister for Health and Family Services will announce what action is to be taken.

Bankruptcy Act 1966

Division 1 of Part VIII of the *Bankruptcy Act 1966*, which Division provides a scheme for the registration of private sector bankruptcy trustees, Divisions 1, 1A and 2 of Part 8 and Division 15 of the Bankruptcy Regulations, and the *Bankruptcy (Registration Charges) Act 1997* are referred for a report on the following:

- the objectives of the specified legislation and related regulation;
- identify any restrictions on competition, and any costs to and benefits for business;
- analyse the likely effect of the restrictions on competition and the economy generally;
- assess whether the objectives of the legislation/regulation can only be achieved by restricting competition;
- consider the impacts, costs and benefits of alternative means for achieving the same result, including non-legislative approaches;

- determine a preferred option for regulation, if any, in light of the analysis undertaken for this review; and
- examine mechanisms to increase the efficiency of any referred regulation, including minimising the cost of compliance and paper burden on small business.

This review should note that the restriction on competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition.

In undertaking the review, the reviewer is to consult widely with key interest groups and interested or affected parties, and publish a report.

The review and report is to have regard to the requirements for regulation assessment as outlined in the Government endorsed publication 'A Guide to Regulation'.

The consultant is to complete the review and report within 5 months of being appointed.

Bills of Exchange Act 1909

1. The Bills of Exchange Act is referred to an Inter-departmental Working Group (the Working Group) for evaluation and report by December 1997. The Working Group, which is comprised of officers from the Treasury, the Reserve Bank of Australia and the Attorney-General's Department, is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business. However, the Working Group may give consideration to a possible broadening of the scope of the Act to encompass financial rights and obligations, whether in the form of a physical instrument or otherwise, which are negotiable in nature, but which are not currently encompassed by the Act.

2. The Act encompasses three types of negotiable instruments, namely, bills of exchange, promissory notes and also cheques drawn before 1 July 1987. The legislation prescribes the form of the instruments, determines many of the rights and obligations of the

parties to the instruments and establishes procedures for their drawing up and resale. The Act does not apply to other money market instruments, some of which have come to be regarded as negotiable instruments, such as certificates of deposit, floating rate notes, Commonwealth Government securities, including Treasury Notes and Treasury Bonds.

3. The Working Group is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can not be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Working Group will seek to ensure efficiency in the money market in relation to the trading of the instruments to which the Act applies; and

   (b) compliance costs and the paper work burden on business should be reduced where feasible.

   In assessing these matters, regard should be had, where relevant, to effects on economic development, investor rights, consumer interests, the competitiveness of business including small business, and efficient resource allocation, taking into account rapid technological developments in electronic commerce and trade.

4. In making assessments in relation to the matters in (3), the Working Group is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Working Group should:

   (a) clarify and review the objectives of the Bills of Exchange Act in the light of continuing technological developments in electronic trading, clearing and settlement of money market securities;

   (b) identify the nature and impact of impediments in the Bills of Exchange Act on the development of electronic techniques for the issue of, trading in and transfer of ownership of,

negotiable instruments, including bills of exchange and promissory notes, and determine in the light of technological advances permitting the transfer of money market instruments by electronic means in screen-based or book-entry depository systems, whether the Act should be extended to cover negotiable instruments other than bills of exchange and promissory notes; in addition, determine whether the Bills of Exchange Act should recognise mechanisms for the creation, recording and transfer by electronic means of payment obligations with equivalent characteristics to negotiable instruments;

(c) identify whether, and to what extent, the Bills of Exchange Act restricts competition;

(d) identify relevant alternatives to the Bills of Exchange Act (including non-legislative approaches) and determine a preferred option for regulation, if any, in light of objectives set out in (3);

(e) determine the need to identify Saturdays as non business days for the purposes of the Act;

(f) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Bills of Exchange Act and alternatives identified in (d);

(g) identify the different groups likely to be affected by the Bills of Exchange Act and alternatives identified in (d);

(h) list the individuals and groups consulted during the review and outline their views; and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on business including small business, of the Bills of Exchange Act and, where it differs, the preferred option.

5. In undertaking the review, the Working Group is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within six months of receiving the Working Group's report, the Government intends to announce what action is to be taken, after

obtaining advice from the Treasurer and where appropriate, after consideration by Cabinet.

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

I, PETER COSTELLO, Treasurer, under Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer the *Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964 (*'the legislation') to the Productivity Commission for inquiry and report within twelve months of receiving this reference. The Commission is to hold hearings for the purpose of the Inquiry.

Background

2. 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 information 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.

3. 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.

Scope of the Inquiry

4. The Commission is to advise on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services. In doing so, the Commission should focus particular attention on balancing the social, cultural and economic dimensions of the public interest and have due regard to the phenomenon of technological convergence to the extent that it may impact upon broadcasting markets.

5. In making assessments in relation to the matters in (4), the Commission is to have regard to the Commonwealth's analytical requirements for regulation assessment, including those set out in the Competition Principles Agreement, which specifies that any legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition. The report of the Commission should:

(a) identify the nature and magnitude of the social and economic problems that the legislation seeks to address;

(b) clarify the objectives of the legislation;

(c) identify whether and to what extent the legislation restricts competition;

(d) identify relevant alternatives to the legislation, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and alternatives identified in (d);

(f) identify the different groups likely to be affected by the legislation and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (4);

(i) examine mechanisms for increasing the overall efficiency of the legislation and, where it differs, the preferred option.

6. In undertaking the review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and release a draft report. The Government will release and respond to the final report produced by the Commission within six months from the date it is received.

Customs Act 1901 — Sections 154 to 161L (Customs Valuation Legislation)

1. The Customs Valuation legislation (section 154 to section 161L of the Customs Act 1901 — 'the legislation') is referred to a Taskforce of Officials for evaluation and report by 20 February 1999. The Taskforce is to focus on those parts of the legislation which affect competition, or which impose costs or confer benefits on business.

2. The Taskforce of Officials is to take into account the following objectives:

   (a) the legislation should be retained in its present form only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches;

   (b) in assessing the legislation, regard should be had, where relevant, to the effects of the legislation on welfare and equity, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

   (d) compliance costs and paper work burden on business, and in particular on small business, should be reduced where feasible; and

(e) Australian compliance with the World Trade Organisation Agreement on Customs Valuation.

3. In making assessments in relation to matters in (2), the Taskforce of Officials should have regard to the requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Taskforce should:

   (a) identify the nature and extent of the matters that the legislation seeks to address, and clarify the objectives of the legislation;

   (b) identify whether, and to what extent, the legislation impacts on competition;

   (c) examine the effects of the legislation on business, taking into account the needs and legitimate expectations of businesses in regard to government regulation;

   (d) examine the relationship between the elements of Australia's customs regulatory regime and the relationship between the customs valuation regime and other regulation affecting importers;

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and any identified alternative means of compliance with the WTO Agreement on Customs Valuation, taking into account relevant developments in world trade;

   (f) identify groups likely to be affected by the legislation and any proposed alternative means of regulation;

   (g) list the individuals and groups consulted during the review and outline their views; and

   (h) recommend a preferred course of action.

4. In undertaking the review, the Taskforce of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

   Within four months of receiving the Taskforce of Officials' report, the Government intends to announce what action is to be taken,

after obtaining advice from the Ministers for Industry, Science and Tourism and Customs and Consumer Affairs and, where appropriate, after consideration by Cabinet.

Defence Housing Authority Act 1987

1. The *Defence Housing Authority Act* 1987 is referred to the Department of Defence for evaluation and report by 30 September 1998. The Department of Defence is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Department of Defence is to report on the appropriate future arrangements for this legislation taking into account the following objectives:

   (a) Legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation can only be achieved by restricting competition.

   (b) In assessing the matters in (a), regard should be had, where relevant to effects on welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

   (c) Compliance costs, paperwork and the work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2), the Department of Defence is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The Department's report should:

   (a) identify the nature of the social, environmental or other economic problem the Defence Housing Authority seeks to address;

   (b) clarify the objectives of the Defence Housing Authority Act and identify whether, and to what extent, the Defence Housing Authority Act restricts competition;

(c) identify relevant alternatives to the Defence Housing Authority Act, including non-legislative approaches;

(d) analyse, and as far as reasonably practical, quantify the benefits, costs and overall effects of the Defence Housing Authority Act and the alternatives identified in (c);

(e) identify the different groups likely to be affected by the Defence Housing Authority Act and other alternatives;

(f) list the individuals and groups consulted during the review and outline their views, or the reasons why consultation was inappropriate;

(g) determine a preferred option for regulation, if any, in light of the objectives set out in (2); and

(h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Defence Housing Authority Act and, where it differs, the preferred option.

5. In undertaking the review, the Department of Defence is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. Within six months of receiving the Department of Defence report, the Commonwealth intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

Drugs, Poisons and Controlled Substances Legislation

In April 1995 State, Territory and Commonwealth Governments agreed to a wide ranging program of micro-economic reform under National Competition Policy. The aim of National Competition Policy is to increase economic growth and the wellbeing of the community as a whole through increased competition across the Australian economy. The scope for increased competition will vary from sector to sector depending on the extent to which other policy objectives of government can be achieved in conjunction with increased competition.

In accordance with obligations under National Competition Policy and the Competition Principles Agreement, a review has been commissioned by State, Territory and Commonwealth Governments to examine legislation and regulation pertaining to drugs, poisons and controlled substances.

The review will identify and assess restrictions contained in legislation against criteria outlined in clause 5(1) of the Competition Principles Agreement. When assessing restrictions on competition against clause 5(1) the review may also have regard to a range of other policy considerations outlined in clause 1(3) of the Agreement. After receiving the review report, Governments will develop a response.

Legislation to be Reviewed

The review will examine the case for reform of legislative restrictions on competition contained in the legislation and regulation governing drugs, poisons and controlled substances. The Acts and Regulations to be reviewed are listed at Appendix A.

The review will have regard to the relevant sections of the Competition Principles Agreement, the COAG Guidelines and Principles for Standard Setting and Regulatory Action and make use of material contained in the guidelines published by Government on regulatory impact statements and on conducting National Competition Policy legislation reviews. The review should have regard to the Mutual Recognition Agreements, particularly when considering issues relating to packaging and labelling. The review should also have regard to public health considerations and the need for consumers to make an informed choice from a safe range of products.

There has already been significant work done in the areas of drugs, poisons and controlled substances and the review should have regard to previous reviews including but not limited to:

- the 1996 report of the Industry Commission into the Pharmaceutical Industry;
- 'Review of the Poisons Scheduling Process in Australia' (Brian Wall 1996);

- Review of the Brand Advertising of Schedule 3 (Pharmacists Only) Medicines, Brian Wall October 1997;
- The Review of the Mutual Recognition Act (COAG Committee for Regulatory Reform).

The review **will not** address the issues of:

(a) the legalisation of illicit drugs;

(b) the interface of drugs, poisons and controlled substances regulation with harm minimisation strategies (for example needle exchange programs);

(c) who has professional prescribing (including possession, administration and supply) rights and the extent of those rights;

(d) pharmacy ownership and the circumstances under which a pharmacist may practice; and

(e) criteria for listing in schedules.

The Chair will report on the appropriate arrangements for regulation, if any, and in particular will:

- clarify the objectives of the legislation;
- identify whether and to what extent the drugs, poisons and controlled substances legislation and regulation restrict competition;
- identify the nature and magnitude of the health problems that the drugs, poisons and controlled substances legislation seeks to address;
- analyse the effect of variation of legislation and regulation across jurisdictions;
- analyse the drugs and poisons interface with other legislative regimes;
- identify relevant alternatives to drugs, poisons and controlled substances legislation and regulation, including non-legislative and less restrictive approaches;

- analyse the likely effect of the restrictions on competition and on the economy in general;
- examine mechanisms for increasing the overall efficiency, including minimising the compliance costs of drugs, poisons and controlled substances legislation and regulation;
- assess and balance the costs and benefits and overall effects of drugs, poisons and controlled substances legislation and regulation and alternative less restrictive approaches;
- consider, where uniformity exists or is achieved as a result of this review, a framework for maintaining uniformity in the future; and
- list the individuals and groups consulted during the review and outline their views.

Review Issues

Having regard to the above, the Review should specifically address the following main issues:

1. Relationship between the processes and arrangements for decisions on drugs and poisons scheduling and drugs and poisons regulation.

   There is currently a national process for the scheduling of drugs and poisons but there is not a national process for the development of regulations and legislation that applies to those schedules. Consideration should be given to the development of a coherent process/connection between scheduling and regulation. For example, consideration could be given to whether the scheduling committee should make recommendations to another body which considers issues of legislation policy.

2. National uniformity of regulation and administration of that legislation.

   Inconsistencies in regulation that could be addressed by the review include:

   - Licensing of manufacturers, wholesalers and retail suppliers of drugs and poisons;

For example, licensing currently occurs in some areas at both Commonwealth and State levels for the same establishments. Options could include rationalising current licensing arrangements and analysing the effectiveness of current codes of practice. An assessment could be made of the potential for further development of codes of practice and other appropriate regulatory options.

- Packaging and labelling standards;

  In the case of most goods, the costs imposed on business of different labelling standards between states have been significantly reduced by the Mutual Recognition Agreement (MRA). An exception to the mutual recognition principle applies to requirements relating to the 'manner of sale'. Because of the link between packaging and labelling and availability under drugs and poisons packaging and labelling requirements form the scope of the MRA. Without limiting its consideration of packaging and labelling standards the review should consider options for reducing costs imposed on businesses through greater uniformity of packaging and labelling requirements between jurisdictions. Alternatively, the review might consider the impact of applying the MRA to drugs and poisons packaging and labelling as a means of addressing non-uniformity issues or to underpin any proposals for uniform arrangements.

- Advertising restrictions;
- Storage and handling requirements;

  Some jurisdictions require medicines, labelled 'to be kept out of reach of children' when displayed for sale, be kept above a certain height. Other jurisdictions have no particular requirements for retailers on this issue.

- Additional requirements such as recording of sale;

  It is known that there are variations in the requirements for the lists of substances in Schedule 3 (Pharmacists Only). While substances included in Schedule 3 are identical each State and Territory makes its own decisions about how this schedule is to be applied. Similarly substances may be put

into a more restrictive schedule to address specific public health concerns related to misuse or abuse within a particular jurisdiction.

3. The number and range of schedules having regard to public access to substances, cost, simplicity of compliance by industry and professions and the optimisation of public health.

4. Interfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.

   For example, an analysis of the potential effects of the lifting of the exemptions applying to therapeutic products currently under the Mutual Recognition Act and the Trans-Tasman Mutual Recognition Agreement.

   Advertising restrictions may be imposed by both the Therapeutic Goods Act and Drugs, Poisons and Controlled Substances legislation. The increasing importance of the drug-food interface needs to be addressed through an analysis of the relationship between the Australian and New Zealand Food Authority Act 1991 and the State and Territory Drugs, Poisons and Controlled Substances legislation.

5. Manner of supply by professionals of drugs, poisons and controlled substances.

   Whilst the issue of prescribing rights is to be excluded from the review, the manner of supply including the way prescriptions are written, handled and processed should be considered having regard to consistency across professions and across jurisdictions.

   For example, regardless of profession, when a medicine is supplied, labelling detailing safe use may be required.

Review Arrangements

The review will be conducted by an independent chair who will be supported by a Secretariat. The Chair will be advised by a Steering Committee specifically established for that purpose.

The Chair will be appointed by the Heads of Government at the time the terms of reference are approved. The Chair will be selected from a nominee/nominees provided by the Chair of the National Public Health Partnership (NPHP) in consultation with the Chair of the COAG Committee on Regulatory Reform.

The NPHP will nominate membership of the Steering Committee and ensure that each jurisdiction in represented. Jurisdictions which are not members of the NPHP will provide a representative on the Committee. The Committee should aim for consensus decisions but where a vote is required, each member of the Committee shall have one vote. In addition, there will be other officers nominated by the COAG Committee on Regulatory Reform. There should also be expertise in health risk analysis and public health law available to the Chair. The Chair may co-opt people as deemed necessary. The Chair will consult with jurisdictions regarding the obtaining of wider expertise to ensure others affected by the legislation are consulted. For example, those responsible for the administration of agricultural and veterinary chemicals, and industrial chemicals. The Steering Committee will meet as often as is deemed necessary by the Chair.

Work may be done from time to time by consultants as identified as necessary by the Chair in consultation with the Steering Committee.

The Chair is to be supported by a Secretariat which will be based at the Therapeutic Goods Administration in Canberra and which will be responsible for all administrative matters relating to the review. The cost of the review, including secretariat, the Chair's fees and recurrent costs, will be shared proportionately according to the population of each State and Territory. The Commonwealth will fund half the cost of the review. Where considered appropriate by the Chair, a jurisdiction may second an officer to the review secretariat, as part or all of its contribution to the cost of the review. Each jurisdiction will cover the steering committee participation costs.

The Chair will report their findings to the Australian Health Ministers Conference. Upon consideration of the report and comments from jurisdictions the report and recommendations will be made to COAG.

Review Process

The Chair will establish a process for national consultation with key interest groups and affected parties and publish a report. The review will use the structure of the National Public Health Partnership for establishing links with all jurisdictions and for ease of administration.

Key Dates

The review will commence on the date on which the Steering Committee is established. The review will report within 12 months of the establishment of the Steering Committee.

Secretariat

The Secretariat will be based at the Therapeutic Goods Administration in Canberra. The Secretariat will report to the Chair and work as directed by the Chair. The Secretariat will consist of officers with expertise in the review of legislation under National Competition Policy, an understanding of the structure and workings of the National Public health partnership and an understanding of public health law, drugs, and poisons administration and micro economics.

The Secretariat will take responsibility for all administrative arrangements relating to the review and work as directed by the Chair.

Appendix A — Legislation to be Reviewed

New South Wales

Poisons and Therapeutic Goods Act 1966

Poisons and Therapeutic Goods Regulations 1994

Drugs Misuse and Trafficking Act 1985

Queensland

Health Act 1937

Health (Drugs and Poisons Regulations) 1996

South Australia

Controlled Substances Act 1984

Controlled Substances (Declared Drugs of Dependence) Regulations 1993

Drugs of Dependence (General) Regulations 1985

Controlled Substances Act (Exemptions) Regulation 1989

Controlled Substances (Poisons) Regulations 1996

Controlled Substances (Volatile Solvents) Regulations 1996

Tasmania

Poisons Act 1971

Poisons Regulations 1975

Alcohol and Drug Dependency Act 1968

Pharmacy Act 1908

Criminal Code Act 1924

Victoria

Drugs, Poisons and Controlled Substances Act 1981

Drugs, Poisons and Controlled Substances Regulation 1995

Western Australia

Poisons Act 1964

Poisons Regulations 1965

Division 5 (Drugs), Division 6 (Medicines and disinfectants) and Division 7 (Manufacture of therapeutic substances) of Part VIIA of the *Health Act 1911*

Health (Drugs and Allied Substances) Regulations

Australian Capital Territory

Drugs of Dependence Act 1989

Drugs of Dependence Regulations 14/1993

Drugs of Dependence Regulations 26/1995

Drugs of Dependence Regulations 29/1995

Poisons Act 1933

Poisons Regulations 1933

Poisons and Drugs Act 1978

Poisons and Drugs Regulations 1993

Public Health (Sale of Food and Drugs) Regulations

Northern Territory

Poisons and Dangerous Drugs Act

Poisons and Dangerous Drugs Regulations

Therapeutic Goods and Cosmetics Act

Pharmacy Act

Export Control Act 1982 (goods such as fish, grains, dairy, processed foods)

1. The *Export Control Act 1992* (the Act), and associated regulations, are referred to the Review Committee ('the Committee') for evaluation and report by 31 August 1998. The Committee is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation and or regulation, which restrict competition, should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include coregulation, quasi-regulation and self regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of

business including small business, and efficient resource allocation;

(c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication;

(d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

(b) clarify the objectives of the Act;

(c) identify whether, and to what extent, the Act restricts competition;

(d) identify relevant alternatives to the Act, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and alternatives;

(g) list the individuals and groups consulted during the Review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2);

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4. In undertaking the Review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration by Cabinet.

Fisheries Legislation

1. The *Fisheries Administration Act 1991,* related Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits in business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following:

   (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation.

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.

   (d) an explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain referenced standards.

(e) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Fisheries Administration Act 1991* and related Acts seeks to address.

   (b) clarify the objectives of the *Fisheries Administration Act 1991* and related Acts.

   (c) Identify whether, and to what extent, the *Fisheries Administration Act 1991* and related Acts restrict competition.

   (d) identify relevant alternatives to the *Fisheries Administration Act 1991* and related Acts, including non-legislative approaches.

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Fisheries Administration Act 1991* and related Acts and alternatives.

   (f) identify the different groups likely to be affected by the *Fisheries Administration Act 1991* and related Acts and alternatives.

   (g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate.

   (h) determine a preferred option for regulation, if any, in light of matters set out in (2).

   (i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Fisheries Administration Act 1991* and related Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

Higher Education Funding

1. The committee will undertake a broad ranging review of the state of Australia's higher education sector, the effectiveness of the sector in meeting Australia's social, economic, scientific and cultural needs, and the developments which are likely to shape the provision of higher education in the next two years.

2. The review committee will develop a comprehensive policy framework for higher education that will allow universities to respond creatively and flexibly to change, and will ensure that the sector meets the needs of students, industry and society in general as these are likely to develop over the next two decades.

3. Within this framework, the review committee will identify options for the financing of higher education teaching and research, and for providing Commonwealth funding to higher education institutions for these purposes.

4. The Government does not wish to limit the scope of the review committee's work in any way, though it expects that the review committee will examine long term developments in the following areas, and the implications of these developments for higher education teaching and research:

   (a) the internationalisation of higher education;

   (b) sources of finance for higher education;

   (c) historical trends and likely future directions in the level and nature of demand for higher education;

   (d) the equality of opportunity to participate in higher education;

   (e) the level and nature of industry demand for higher education graduates and higher education research, and the contribution that graduates and research conducted within

higher education institutions makes to the competitiveness of Australian industry;

(f) the role of research conducted in higher education institutions in the national research and innovation system, and the increasing importance of international links for research conducted in higher education institutions in Australia;

(g) teaching practice and course content in the context of changing undergraduate and postgraduate students' needs and developments in the knowledge base of disciplines;

(h) the use of advanced communications technologies in teaching, and in libraries and other teaching and research infrastructure;

(i) pressures on higher education quality assurance and accreditation processes arising from the development of more diverse higher education sector;

(j) policy and practice in public sector financing and management, including the increased emphasis on competition, contestability and competitive neutrality principles; and

(k) the review committee will take account of the requirements of the Commonwealth's legislation review program.

In developing its recommendations, the Government expects that the review committee will pay particular attention to the need to ensure that:

(a) public funds for higher education teaching and research are used efficiently and effectively, and appropriate accountability arrangements are in place;

(b) government funding mechanisms and processes encourage diversity between higher education institutions and excellence in teaching and research;

(c) program and advisory structures for research and development in the higher education sector:

   – maximise the development of higher level skills;

- maximise the contribution of higher education research to the broader research and innovation system;
- strengthen Australia's research base and its contribution to Australia's long term sustainable industry competitiveness; and
- facilitate the communication of research results to end users in industry and the community;

(d) government funding mechanisms support a national system of higher education, in which it is recognised that universities play a vital role in regional economies;

(e) there is an appropriate balance between private and public funding for higher education;

(f) financial, social and geographic factors do not act as a barrier to higher education for appropriately qualified students within Australia;

(g) higher education institutions are committed to achieving high quality outcomes and to continuous quality improvement;

(h) the structure and range of higher education courses meets the needs of students and industry;

(i) the interfaces between the higher education sector and the vocational education and schools sectors operate efficiently and effectively; and

(j) commercial activities comply with the principles of competitive neutrality.

The review committee will provide a final report to the Minister by December 1997.

Imported Food Control Act 1992

1. The *Imported Food Control Act 1992* (the Act), and associated regulations, are referred to the Review Committee (the Committee) for evaluation and report by 31 August 1998. The Committee is to focus on those parts of the legislation which

restrict competition, or which impose costs or confer benefits on business.

2. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) Legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include coregulation, quasi-regulation and self regulation.

   (b) In assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

   (c) The need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication.

   (d) Compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Act seeks to address;

   (b) clarify the objectives of the Act;

   (c) identify whether, and to what extent, the Act restricts competition;

(d) identify relevant alternatives to the Act, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option.

4. In undertaking the review, the Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration by Cabinet.

Intellectual Property Protection Legislation

1. The committee shall inquire into and report to the Attorney-General and Minister for Industry, Science and Resources by 30 June 2000 on:

   (a) the objectives of, including the nature and magnitude of the problems sought to be addressed by:

   – the *Copyright Act 1968*;

   – the *Designs Act 1906*;

   – the *Patents Act 1990*;

- the *Trade Marks Act 1995*;
- the *Circuit Layouts Act 1989*;
- any regulations made under the Acts referred to in (i) to (v);

(b) the nature of the restrictions in the legislation in (a) on competition;

(c) the likely effects of the restrictions referred to in (b) on competition, businesses, including small businesses, and the economy generally;

(d) whether there are alternative, including non-legislative, means for achieving the objectives referred to in (a);

(e) the costs and benefits to businesses, including small businesses, and the economy generally of:

- the restrictions referred to in (b); and
- the legislation overall referred to in (a);
- any identified relevant alternatives to the legislation, including non-legislative approaches;

(f) the appropriateness, effectiveness and efficiency of:

- the legislation referred to in (a) and regulations made thereunder; and
- the administration established under that legislation;
- any identified relevant alternatives to the legislation, including non-legislative approaches, in achieving the objectives of the legislation.

2. In undertaking the inquiry and preparing the report referred to in (1), the committee shall have regard to:

(a) the determination, in the Competition Principles Agreement that legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition;

(b) the intentions and policies of the Government as expressed in statements made or authorised by responsible Ministers in relation to the legislation referred to in (1)(a), including amendments approved and announced but not yet enacted;

(c) the obligations under international treaties that relate to the subject matter of the legislation referred to in (1)(a) and of which Australia is a member country or may become a member country;

(d) the conclusions and recommendations in recent reviews affecting the legislation referred to in (1)(a) that have not yet been responded to by the Government, including, but not limited to:

   – the report of the National Competition Council entitled *Review of sections 51(2) and 51(3) of the Trade Practices Act 1974*;

   – the report of the Copyright Law Review Committee entitled *Simplification of the Copyright Act 1968*;

(e) the views conveyed to it by any current review affecting the legislation referred to in (1)(a).

3. In undertaking the inquiry and preparing the report referred to in (1), the committee shall:

(a) advertise these terms of reference nationally;

(b) consult with stakeholders and invite submissions from all interested parties;

(c) hold hearings to afford interested parties the opportunity to make oral submissions;

(d) invite the views of any review referred to in (2)(e); and

(e) note the possibility that its report may be published.

International Air Services Agreements, International Air Services Commission Act 1992

In undertaking the review the Industry Commission should:

(a) identify the current regulatory/legislative framework in which international air services operate, including multilateral as well as bilateral structures and the objectives of the framework:

  – in this context, identify the nature and characteristics of the commercial rights being traded, including reference to airport access as an essential prerequisite to trade in aviation services;

  – identify the effect on competition in the global market of the bilateral international air services agreement framework;

  – identify the effect on competition in Australia's existing and potential international aviation markets of Australian policy in relation to bilateral air services agreements;

  – assess whether the International Air Services Commission (IASC) allocation process provides net benefits to Australia, including reference to the value of provisions designed to favour new entrants;

  – analyse and assess the benefits, costs and overall effects of the international aviation regulatory framework and Australia's approach to negotiating bilateral air services agreements for tourism, consumers, air freight and the aviation industry; and

  – in doing so, determine whether the approach currently adopted maximises the benefits to Australia possible within the bilateral framework;

(b) assess the options for greater liberalisation;

  – within the context of the bilateral system (including the role that bilateral partners may play in restricting entry); and

  – alternatives to the bilateral system; and

(c) identify the scope and consequences (costs and benefits and overall effects) for Australia of these options.

The Government will consider the Commission's recommendations and its decisions will be announced as soon as possible after the receipt of the Commission's report.

International Arbitration Act 1974

1. The *International Arbitration Act 1974* (Cth) ('the Act') is referred to the Attorney-General's Department for evaluation and report by June 1997. The Attorney-General's Department is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

   The Act gives effect in Australia to three international instruments which facilitate international commercial dispute resolution. The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) provides a mechanism for recognition and enforcement of foreign arbitral awards in Australian courts. The Convention on the Settlement of Investment Disputes between the States and Nationals of Other States (ICSID) provides access to the International Centre for the Settlement of Investment Disputes for the purposes of resolving investment disputes between States and nationals of other States. The Act also implements the UNCITRAL Model Law on the International Commercial Arbitration (the Model Law) which provides procedural rules for the conduct of international commercial arbitrations in Australia.

2. The Attorney-General's Department is to report on the appropriate arrangements for regulation, if any, of the matters covered by the Act, taking into account the following objectives:

   (a) legislation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation cannot be achieved more efficiently through other means, including non-legislative approaches. In developing any options, the Department will seek to ensure certainty in the market place, contract dealings and other commercial transactions, minimise the regulatory burden on business and government, and keep litigation and costs to a minimum;

(b) in assessing the matters in (a), regard should be had to the effects on economic development, consumer interests, the competitiveness of business including small business, and efficient resource allocation; and

(c) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to matters in (2) the Attorney-General's Department is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement signed by the Commonwealth and all State and Territory Governments in April 1995. The report of the Attorney-General's Department should:

   (a) identify the nature and magnitude of the problems(s) that the Act seeks to address in facilitating international commercial dispute resolution;

   (b) clarify the objectives of the Act;

   (c) identify whether, and to what extent, the Act restricts competition;

   (d) identify relevant alternatives to the Act and make recommendations on strategies to address and/or minimise the effects of those parts of the Act that restrict competition, or impose costs or confer benefits on business or government, taking into account, but not limited to:

      – the potential application of alternatives to legislation and court-based remedies, and mechanisms to support these measures;

      – the effect upon any sector of business and, in the case of the ICSID Convention, a State or Commonwealth government, which is involved in international commercial arbitration proceedings whether held in Australia or overseas; and

      – international repercussions;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Act and alternatives identified in (d);

(f) identify the different groups likely to be affected by the Act and alternatives identified in (d);

(g) list the individuals and groups consulted during the review and outline their views;

(h) determine a preferred option, if any, for regulation, in light of the objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Act and, where it differs, the preferred option, if any.

4. In undertaking the review, the Attorney-General's Department is to advertise nationally, consult with key interest groups and affected parties, both international and domestic, and publish a report.

Written submissions from interested individuals and organisations should be forwarded to the Attorney-General's Department by [date to be negotiated]. Submissions and enquiries should be directed to:

Ms Josephine Brook
International Trade Law Section
Attorney-General's Department
Robert Garran Offices
National Circuit
BARTON ACT 2600

Telephone: (06) 250 6583
Facsimile: (06) 250 5929

5. Within six months of receiving the Attorney-General's Department's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consultation by Cabinet.

Review of Lands Acquisition Legislation

Background

The *Lands Acquisition Act 1989* (the Act) was proclaimed and came into operation on 9 June 1989 (Gazette S185 of 9 June 1989). It has now been in operation for the best part of ten years and over that period a number of possible adjustments have been identified. A review of the operation of the Act (and related legislation) is, therefore, timely.

In addition, as part of the COAG Competition Principles Agreement, the Government decided in 1996 that reviews are to be conducted of legislation which may restrict competition, impose significant costs on business or provide significant benefits to business. Under that Agreement, reviews of the following legislation (inter alia) are to be commenced in 1998-99:

- the *Lands Acquisition Act 1989* (and the Regulations made thereunder);
- the *Lands Acquisition (Defence) Act 1968; and*
- the *Lands Acquisition (Northern Territory Pastoral Leases) Act 1981.*

It is opportune that the conduct of the reviews be merged and the following outlines the Terms of Reference for the merged review.

General

Term of Reference 1

The review body will comprise an intra-departmental committee of four senior officials from within the Department of Finance and Administration. At least one shall be drawn from an area of the Department not involved in administration or management of the legislation under review.

The committee may draw on contracted advice and assistance as it deems necessary.

The Secretariat for the committee will be provided by the Resource Management Framework Group of the Department.

Term of Reference 2

In conducting the review, the committee will:

- advertise nationally;
- consult with key interest groups;
- accept submissions from interested and affected parties; and
- submit its draft recommendations for comment by a person recognised as eminent in the field of public policy and public administration.

Term of Reference 3

The committee will submit a final report in writing to the Minister for Finance and Administration by 31 December 1999. A report of the final recommendations may be made public depending on their significance.

Term of Reference 4

The final report is to provide recommendations for legislative repeal and amendment as appropriate, with reasons in support thereof, and should address any comments made by the person referred to in the fourth dot point of Term of Reference 2.

Lands Acquisition (Defence) Act 1968

The *Lands Acquisition (Defence) Act 1968* was enacted to facilitate Commonwealth acquisition of certain lands in the Holsworthy area from the State of New South Wales for defence purposes. The New South Wales Government had reserved the land for the purpose of Public Recreation with the express intention of frustrating Commonwealth acquisition. The Act is considered to be of historical interest only and to have no present or prospective utility.

Term of Reference 5

The committee is to examine the Act and confirm, if such is the case, that:

(a) it has no competition policy implications; and

(b) there is no obstacle to its repeal at the earliest opportunity.

Lands Acquisition (Northern Territory Pastoral Leases) Act 1981

The *Lands Acquisition (Northern Territory Pastoral Leases) Act 1981* was enacted to remove doubts that all interests in the Mudginberri and Munmarly (former pastoral lease) properties had vested in the Commonwealth pursuant to an earlier acquisition under the Lands Acquisition Act 1955.

Term of Reference 6

The committee is to examine the Act and confirm (if such is the case) that:

(a) it has no competition policy implications; and

(b) although it has no prospective utility, it needs to be retained.

Lands Acquisition Act 1989 (and Regulations)

Since the *Lands Acquisition Act 1989* (the Act) came into operation a number of possible adjustments have been identified.

Each year some 3000 individual property transactions within Australia and overseas are conducted under the legislative authority of the Act. These involve dealings between Commonwealth agencies (described in the Act as 'acquiring authorities') on the one hand, and a range of other parties — including other Commonwealth agencies, State and Local Government bodies, major institutional investors, large medium and small corporations, unincorporated organisations and associations, and individual private citizens.

Transactions fall into three main categories:

- Category 1 — straightforward commercial leases of office space (and related transactions such as assignment, surrender, sub-letting, etc) and purchase of residences to accommodate staff. These represent about 85 per cent of all transactions. *Included in this category are a number of acquisitions from State Governments effected by compulsory process (but with the consent of the relevant State) for administrative convenience mainly to avoid cumbersome State processes for issuing titles.*

- Category 2 — straightforward commercial disposals of surplus property. These represent about 10 per cent of all transactions.
- Category 3 — compulsory acquisitions, or acquisitions carried out in circumstances where there may be implied duress created by the mere existence of the compulsory acquisition powers. These generally involve projects where the location is constrained by technical considerations (for example, radio frequency coverage), the presence of adjacent facilities (for example extension of Defence establishments or development of national infrastructure), or Government policy decisions (for example the location of Sydney's Second Airport) representing about 5 per cent of all transactions.

Term of Reference 7

The attached Schedule 1 comprises observations about the Act compiled from experience in its operation in all the above circumstances over the period since proclamation.

The committee is to examine the Act and make recommendations for amendment as outlined in Term of Reference 4. In so doing the committee is to have particular regard to the issues raised in Schedule 1.

Competition Principles

In relation to the COAG Competition Principles Agreement, through which reviews are to be conducted of legislation which may restrict competition, impose significant costs on business, or provide significant benefits to business the following terms of reference are relevant in this review.

Term of Reference 8

The review is to focus on those parts of the legislation which:

- restrict competition;
- impose costs on business; and
- confer benefits on business.

Term of Reference 9

The committee's report will address the appropriate arrangements for regulation, if any, taking into account:

(a) retention of legislation or regulation which affects competition only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation can only be achieved through restricting competition;

(b) regard should be had (where relevant) to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, competitiveness of business including small business, and efficient resource allocation;

(c) the need to promote consistency between regulatory regimes and efficient regulatory administration through improved coordination to eliminate unnecessary duplication; and

(d) compliance costs and paper work burden on small business should be reduced where feasible.

Term of Reference 10

The committee's report will:

(a) identify the nature and magnitude of the social, environmental, or other economic problem(s) the legislation seeks to address;

(b) clarify the objectives of the legislation;

(c) identify whether, and to what extent, the legislation restricts competition;

(d) identify relevant alternatives to the legislation, including non-legislative approaches;

(e) analyse, and as far as reasonably practical, quantify the benefits, costs, and overall effects of the legislation and any alternatives identified in (d);

(f) identify the different groups likely to be affected by the legislation and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in the light of the objectives set out in Term of Reference 9; and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the legislation and, where it differs, the preferred option.

Lands Acquisition Act 1989

Preliminary Listing of issues for consideration in the review

Section 5

The effect of this section in relation to land in the Norfolk Island, Christmas Island and the Cocos (Keeling) Island Territories (and, possibly, the ACT) is unclear and may require adjustment given subsequent amendments to legislation affecting those Territories.

Comment: The matter needs clarification.

Section 6

The Act is primarily intended to deal with acquisition of property by compulsory process, or acquisitions which have overtones of possible compulsion about them such as in unsolicited approaches to property owners. The definition of 'interest in land', however, has the effect that a multitude of straightforward commercial transactions (for example, the renting of office space and the purchase of houses to accommodate public servants and defence personnel) are caught by its provisions.

Comment: Consideration should be given to how straightforward commercial transactions could be effected more simply, and perhaps removed from the purview of the Act entirely.

Sections 22 to 33

Section 24MD of the *Native Title Amendment Act 1998* confers on native title holders, and registered native title claimants, certain rights of notification, objection and independent review additional to those set out in ss. 22-33 of the Lands Acquisition Act.

Comment: Consideration should be given to the desirability of incorporating reference to the NTAA rights in the LAA and/or the desirability of limiting the avenues of objection and review to one legislative regime.

Subsection 40(3)

This section requires the Minister to table in both Houses a statement of acquisitions by agreement effected under the Act within Australia.

Comment: The need to table details of commercial leases and staff housing acquisitions which are the great majority of acquisitions, should be reconsidered.

In any event, given the devolution of contracting arrangements, the requirement as presently worded is at times impractical to observe. An option could be to table details of authorisations given (which are within the Minister's direct control), rather than details of agreements entered into (the majority of which are commercial transactions by 'acquiring authorities' which are not within the Minister's direct control).

Subsection 40(4)

This subsection (and subsection 119(2)) imply that a failure to obtain approval for an acquisition (even if inadvertent) may invalidate the acquisition.

Comment: Given the possible consequences for people dealing with Commonwealth in good faith, consideration should be given to a provision along the lines that failure to comply with a provision of the Act does not invalidate an acquisition by agreement.

Section 42

An interest in land in a public park can only be acquired:

- by compulsory process,

  and

- with the consent of the relevant State or Territory,

  and

- either an Inquiry under Section 11 of the Environment Protection (Impact of Proposals) Act,
- or a resolution of both Houses of Parliament that such an Inquiry is not necessary,

  and (if the land is in a World Heritage or a National Estate area)

- preparation of an Environmental Impact Statement.

Comment: These provisions may be unnecessarily restrictive in many cases (for example minor leases for access purposes). A more simple approach may be appropriate, for example in those cases where the interest is to be acquired by way of lease or licence (particularly from a State or Local Government agency).

Subsection 43(2)

This section provides that (where no application for reconsideration by the Minister has been made) a pre-acquisition declaration (PAD) becomes absolute 28 days after the last day on which such an application could have been made.

Comment: The effect of this section is that an acquisition cannot be completed until a minimum of 56 days has elapsed after issue of a PAD. There is no provision for that period to be waived or shortened — even where the property owner is amenable to that course.

Subsection 58(2) and section 91

A combination of these two sections (in cases where compensation is assessed on a relocation or reinstatement basis) can lead to unjust enrichment of the claimant by providing the claimant with the actual costs of relocation/reinstatement of a property used other than for business purposes, calculated at the date of expenditure, together with interest thereon from the date of acquisition.

Comment: Some adjustment is needed to resolve the issue.

Section 61

This section can be interpreted to mean that, either multiple occupants of an acquired dwelling (for example children living with parents in an owned or rented dwelling, or several students sharing a rented dwelling) are each entitled to a 'solatium' payment of $10,000 (indexed) plus relocation costs, or that one payment per dwelling unit is payable.

Comment: The ambiguity should be resolved.

Sections 82 and 91

Under section 82 the Minister cannot seek to have compensation determined by the Federal Court until:

- a person has made a claim for compensation; and
- three months have elapsed.

There is no provision in the Act which requires a person to make a claim for compensation within any specified time (or at all, for that matter). A result is that an acquiring authority can be exposed to a contingent liability for payment of compensation (and possibly interest, unless the delay is due to 'default or delay' of the claimant — see section 91)) indefinitely.

Comment: Options to resolve this uncertainty need to be developed. One possible option is independent determination of compensation and its deposit in the Treasury.

Section 91 and Regulation 5

Interest payable on an amount of compensation is to be calculated from the date of acquisition as the assessed secondary market yield in respect of 5 year non-rebate Treasury bonds published by the Reserve Bank from time to time — reassessed and compounded at quarterly intervals.

Comment: The intention of how the Regulation is intended to be applied is unclear and needs to be clarified.

Section 121

This section requires the Minister, in disposing of land acquired by compulsory process within the previous seven years, to have regard to the general principle that the land should, if practicable, be offered back to the former owner.

Comment: Legal advice is that this principle might be construed literally to prevent transfer of land for construction of infrastructure facilities under BOO or BOOT schemes (where the builder would require title as security for financing) — even though such transfer would be to implement the public purpose for which the land was acquired. Whilst there is scope for the matter to

be dealt with on a case-by-case basis, an amendment to accommodate this general principle may be desirable.

Section 124

This section contemplates the making of Regulations in relation to mining on Commonwealth land. No such regulations have ever been made with the result that sections 51 and 53 of the *Lands Acquisition Act 1955* have been preserved.

Comment: Given the arguments raised in the Lancelin Western Australia and Jabiluka Northern Territory cases in the High Court, the issue of whether the LAA is (or should be) a mandatory code regulating mining on Commonwealth land, or simply a facultative guide, should be addressed.

Subsection 125 (5)

This subsection requires the Minister to table in both Houses a statement of acquisitions under the Act in relation to overseas land.

Comment: The same comments as were made in relation to subsection 40(3) apply.

Section 139

This section enables the Minister to delegate certain powers — but only to officers of the APS or to persons having executive authority in relation to the affairs of a Commonwealth authority.

Comment: These categories should be extended to cover appropriate persons in the Defence Forces, and possibly others (for example persons contracted to carry out specific project tasks). It might also be appropriate to consider including a power to enable delegates (or classes of delegates — for example Secretaries or CEOs) to sub-delegate to others.

Sections 38(1), 51(1), 65(1)(b)(ii), 87(2)(a), 123(3), 136, 138, 139

These sections refer to powers or duties of the Attorney-General and the Secretary of the Attorney-General's Department in relation to certain matters.

Comment: Given the commercialisation of a large part of the Attorney-General's Department, and the extensive use of private sector lawyers

by acquiring authorities, the references are now inappropriate. Other options for the vesting of these powers and duties should be examined.

Native Title issues

Comment: The LAA pre-dates the Native Title Act (NTA) and the concept of Native Title. The interaction between the two Acts should be examined for example to address:

- confirmation that native title is an 'interest in land' as defined in s. 6 of the LAA
- the right of native title claimants to be given a pre-acquisition declaration (that is, are they persons 'affected' by it — *see* s. 22(7)
- the right, if any, of native title claimants to seek reconsideration or review of a pre-acquisition declaration (are they 'owners' for the purposes of s. 22(10)
- the right of objection and review conferred by s 24 of the *Native Title Amendment Act 1998*.

Motor Vehicle Standards Act 1989

The *Motor Vehicle Standards Act 1989*, with its associated regulations, determinations and administrative arrangements (the Legislation), except for the technical aspects of the Australian Design Rules which are subject to a separate review, is referred to the Task Force of inter-governmental Officials (the Task Force).

The Task Force, under the guidance of an Independent Reference Committee, is to review and report on the appropriateness of the legislation and its effectiveness and efficiency in improving vehicle safety, emissions and anti-theft standards and recommend to Government any changes that should occur.

The Task Force is to ensure, to the extent possible, that any matters arising from the Review of the Australian Design Rules are taken into account in the review of the legislation.

1. The Task Force is to assess the appropriateness, effectiveness and efficiency of the Legislation and, in particular, is to assess and report on:

   (a) the objectives of the Legislation and the extent to which those objectives remain appropriate, including the nature and magnitude of the problem which the Legislation seeks to address;

   (b) the costs and benefits to the community and industry of the Legislation in achieving its objectives;

   (c) any restrictions on competition that the Legislation imposes, including the costs and benefits of those restrictions on the economy generally;

   (d) the impact the Legislation has on safety, the environment, equity, health, regional development, consumer interests or business competitiveness;

   (e) the degree to which the Legislation, operating in conjunction with the *National Road Transport Commission Act 1991* and other Commonwealth, State and Territory legislation, has been effective in preventing non-compliant or unsafe road vehicles entering the market;

   (f) the effectiveness and efficiency of the Low Volume Manufacture Scheme, in terms of ensuring vehicle safety, emissions compliance and reducing compliance costs for imports of enthusiasts' or specialist vehicles supplied to the Australian market in small numbers;

   (g) the current administrative arrangements, including the effectiveness and efficiency of these arrangements in relation to vehicle standards and client service;

   (h) the level of compliance costs for industry and regulatory costs for governments, the impact on small business and ways to reduce the compliance and paperwork burden; and

   (i) the current cost recovery arrangements and the extent, if any, of cross subsidy between and within industry sectors and the relevance of charging practices to the services carried out for each sector.

2. The report of the Task Force is to cover the matters referred to in paragraph A and in addition is to identify, assess and report on:

   (a) the costs and benefits to the community and industry of alternative arrangements, including non-regulatory arrangements, for establishing and ensuring compliance with appropriate vehicle standards;

   (b) the costs and benefits to the community and industry, including impacts on trade, of harmonising Australian vehicle standards with international vehicle regulation and of maintaining some unique Australian vehicle standards; and

   (c) the preferred approach for meeting future vehicle standards requirements.

3. In assessing future options and preferred arrangements, the review is to have regard to the National Competition Principles Agreement and a range of relevant matters, including:

   (a) measures to improve the effectiveness of current arrangements, taking account of the proposed Road Vehicle Certification System, alternatives to that scheme and client service charters;

   (b) the role of the Low Volume Manufacture Scheme within the overall vehicle certification and compliance scheme;

   (c) the intention that arrangements minimise regulatory requirements, having regard to costs and benefits to the community as a whole; and

   (d) current and likely future developments in:

      - international safety regulation, including approaches in place and under consideration in the United Nations — Economic Commission for Europe, Japan and other Asian markets, Europe, North America and New Zealand;

      - emissions control and environment protection, both overseas and in Australian jurisdictions;

- anti-theft standards and measures being proposed by manufacturers, law enforcement agencies and consumer groups in Australia and overseas; and
- other future requirements.

4. The review is to consider:

(a) changes in Government policies impinging on the industry;

(b) current and emerging industry trends and practices, including standardisation of safety features and components;

(c) the relationship between Commonwealth controls imposed on road vehicles first provided to the market and in-service vehicle standards principally controlled by the States;

(d) the improving levels of vehicle safety, vehicle emissions and anti-theft controls in vehicles manufactured in Australia and overseas;

(e) the findings of Australian and international reviews and expert reports on motor vehicle safety standards, emission controls and anti-theft devices; and

(f) current and potential arrangements for cost recovery.

5. In undertaking the review the Task Force is to:

(a) advertise nationally for submissions;

(b) consult with key stakeholders, interest groups and affected parties;

(c) list individuals and groups consulted during the review and outline their views; and

(d) publish a report of its findings at the time of the Government's decision on its recommendations or earlier.

Mutual Recognition Agreement Legislation

The Review Group reviewing the legislation regarding the Mutual Recognition Agreement (the Agreement) shall be required to conduct the review in accordance with the terms for legislation reviews set out in the Competition Principles Agreement. The guiding principle of the

review is that legislation 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.

Without limiting the scope of the review of the legislation regarding the Agreement, the Review Group shall:

- clarify the objectives of the legislation;
- identify the nature of the restrictive effects on competition;
- analyse the likely effect of any identified restriction on competition on the economy generally;
- assess and balance the costs and benefits of the restrictions identified;
- consider alternative means for achieving the same result, including non-legislative approaches;
- consider whether the scope of the legislation should be extended to other areas of regulation. This term of reference does not include revisiting the issue of partially registered occupations;
- examine options for improving the interaction between the mutual recognition and other microeconomic and regulatory reforms; for example, the Trans-Tasman Mutual Recognition Arrangements (TTMRA) make direct reference to standards being developed in accordance with the COAG principles and guidelines. Maybe a similar link in the Agreement would be useful;
- identify appropriate mechanisms for monitoring the ongoing operation of mutual recognition. There may be some mechanisms that could be established to better monitor the operation of the goods side of mutual recognition, or registration bodies could be required to provide mutual recognition data to CRR annually to assist with ongoing monitoring and provide information for future reviews; and
- in undertaking its work, have regard to the independent review of the scheme by the Commonwealth Office of Regulation Review

entitled *Impact of Mutual Recognition in Australia: A Preliminary Assessment*, January 1997.

In the course of the review the Review Group should:

- identify any issues of market failure which need to be, or are being addressed by the legislation; and
- consider whether the effects of the legislation contravene the competitive conduct rules in Part IV of the *Trade Practices Act 1974* (Commonwealth) and the Competition Codes of each jurisdiction.

The team shall consult with and take submissions from consumers, producers and other interested parties.

The Review Group shall present its report to COAG Senior Officials by 1 March 1998.

National Residue Survey Administration Act 1992

1. The *National Residue Survey Administration Act* 1992 (NRS Administration Act), and associated legislation, will be referred to a Committee of Officials for evaluation and report by 30 November 1998. The Committee of Officials is to focus on the objectives of the legislation and on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity,

occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

(c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

(d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the NRS Administration Act and associated legislation seeks to address;

(b) clarify the objectives of the NRS Administration Act and associated legislation;

(c) identify whether, and to what extent, the NRS Administration Act and associated legislation restricts competition;

(d) identify relevant alternatives to the NRS Administration Act and associated legislation, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of NRS Administration Act and associated legislation and alternatives identified in (d);

(f) identify the different groups likely to be affected by the NRS Administration Act and associated legislation and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the NRS Administration Act and associated legislation and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to consult with key interest groups and affected parties, and publish a report.

5. Within 3 months of receiving the Committee of Officials report, the Bureau of Resource Sciences intends to announce what action is to be taken, after obtaining advice from the Minister.

Navigation Act 1912

The *Navigation Act 1912*, except for Part VI of the Act dealing with the coastal trade, is referred to a review team for evaluation and report by 1 July 2000. The review team is to focus on those parts of the legislation that restrict competition or trading opportunities, are anachronistic or redundant, or which impose costs or confer benefits on business. Part VI is excluded from the review as it has been the subject of a separate review process.

The review team will:

- identify the nature and magnitude of safety, environmental, economic and social issues that the *Navigation Act 1912* seeks to address;
- clarify the objectives of the Act and their appropriateness in terms of objectives for modern shipping regulation;
- identify the nature and extent of restrictions on competition contained in the Act;
- identify relevant alternatives to the Act including non-legislative approaches;

- analyse and, as far as practicable, quantify the benefits and costs and the overall effects of the Act and the alternative approaches identified above;
- identify the groups likely to be affected by the legislation and alternatives, list the groups and individuals consulted and outline their views; and
- make recommendations on preferred options for legislative or non-legislative measures to meet the identified objectives.

In assessing these matters and making recommendations, the review team will take into account:

- Australia's rights, obligations and duties under the UN Convention on the Law of the Sea and relevant conventions and resolutions of competent international organisations;
- the objective that regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and where the objectives of the Act can only be achieved by restricting competition;
- any relevant effects on safety, the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business and efficient resource allocation; and
- the need to reduce where feasible compliance costs and the paperwork burden on business, particularly small business.

In undertaking the review, the review team is to advertise nationally the fact of the review, identify and seek submissions from interested parties likely to be affected by the Act, consult with key interest groups and affected parties and prepare a report for publication.

The review team will provide a progress report by 17 December 1999, with a final report to be presented by 1 July 2000. The review team will ensure that within two weeks of the report being finalised, it is forwarded to the Minister with a recommendation that the report be forwarded to the Treasurer to satisfy competition policy requirements.

Pharmacy Regulation

Introduction

In accordance with commitments under the 1995 Competition Policy Agreement, a review has been commissioned by State, Territory and Commonwealth governments to examine State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to regulation of the location of the premises of pharmacists approved to supply pharmaceutical benefits.

Background

On 13 May 1997 the Prime Minister, in his role as Chairman of COAG, wrote to State Premiers and Territory Chief Ministers, seeking their agreement to a national competition review of pharmacy regulation. On 1 May 1998, the Prime Minister advised Premiers and Chief Ministers that all Governments had agreed to the review.

Legislation to be reviewed

The specific items of legislation to be reviewed are listed at Attachment A.

In summary, they include:

- in relation to State and Territory responsibilities, legislation concerning pharmacy ownership and the registration of pharmacists; and
- in relation to Commonwealth responsibilities, section 99L of the National Health Act insofar as it relates to the regulation of the location of premises from which pharmacists may dispense pharmaceutical benefits.

Objectives and Scope of the Review

Clarify the objectives of the legislation listed at Attachment A.

Identify the nature of any restrictions on competition arising from that legislation.

Analyse the likely effects of those restrictions on competition and on the economy generally.

Assess and balance the costs and benefits of the restrictions, and assess whether the objectives of the legislation can be achieved only by restricting competition.

Consider alternative means for achieving the objectives, including non-legislative approaches and assess the costs and benefits of pursuing those alternatives.

The review will have regard to the relevant sections of the Competition Principles Agreement, the COAG Guidelines and Principles for National Standard Setting and Regulatory Action, the COAG Guidelines for Review of Professional Regulation and make use of material contained in guidelines published by Commonwealth and State governments on regulatory impact statements and on conducting National Competition Policy legislation reviews. If practicable, the review should also have regard to the outcome of related reviews such as the national competition review of drugs and poisons regulation.

The review should also assess the net public benefit of the legislation having regard to the public benefit criteria set out in clause 1(3) of the Competition Principles Agreement (*see* Attachment B).

In the case of Tasmania and Queensland, the review will not cover the registration of pharmacists as this legislation has already been reviewed.

Review Administration

Chair and Steering Committee

The review will be conducted by an independent Chair who will be supported by a small secretariat. The Chair will be advised by a Steering Committee specifically established for that purpose.

The Chair should have familiarity with economic principles and the pharmacy industry. He/she will be selected from a short-list of nominees prepared by the Commonwealth Department of Health and Aged Care in consultation with State and Territory health departments.

Nominations for membership of the Steering Committee will be obtained through consultation involving Commonwealth, State and Territory Departments of Health and the Committee for Regulatory Reform of COAG. A key criterion for the Steering Committee is that it comprises one representative from each jurisdiction and that that person is able to represent the government agency whose legislation is subject to the review.

Resources

The Commonwealth will fund half the costs of the review, excluding Steering Committee participation costs, which are to be met separately by each participating government. The remaining costs of the review will be shares proportionately according to the population of each State and Territory. If considered appropriate, any participating government may offer to second an officer to the review Secretariat as part of its contribution.

Costs to be taken account of in developing a budget for this review include:

- staffing and office costs for Secretariat;
- payment to an independent Chair;
- payment to any consultants contracted;
- costs of producing the report;
- costs associated with consultations, advertising for submissions etc; and
- associated travel cost.

The total cost of the review could be expected to be in the vicinity of $500,000.

The Commonwealth Department of Health and Aged Care will provide the base for the secretariat functions and significant staff support for the Review Secretariat itself. Final details of staffing, including the appropriate level and mix of skills, can be resolved through the Steering Committee.

The Chair should seek submissions from the public through advertisements in the national press and other mechanisms considered appropriate. The Chair should also consult directly with key stakeholders on the issues covered by the review.

The review is to commence as soon as possible. The Chair should provide governments and key stakeholders with an interim report within 4 months of the commencement of the review to assist in their consideration of issues relating to pharmacy ownership, the registration of pharmacists and the location of pharmacies, and to provide an indication of the review's likely findings. The Chair should provide COAG with a final report on the review not more than 6 months after its commencement.

Legislation to be reviewed

1 *State and Territory Legislation*

The relevant instruments relating to pharmacy ownership and registration of pharmacists for the States and Territories are as follows:

Western Australia, *Pharmacy Act 1964*, Pharmacy Act Regulation 1976

New South Wales, *Pharmacy Act 1964*

Victoria, *Pharmacists Act 1974*

South Australia, *Pharmacists Act 1991*

Queensland, *Pharmacy Act 1976*, Part 4

Tasmania, *Pharmacy Act 1908*, (not including those parts relating to the registration of pharmacists)

Northern Territory, *Pharmacy Act 1996*

Australian Capital Territory, *Pharmacy Act 1931*

2 *Commonwealth Legislation*

There is one instrument involved:

Commonwealth Ministerial Determination under section 99L(1) of the *National Health Act 1953*: that part relating to 'Approval to Supply Pharmaceutical Benefits'.

Public Benefit Test

Competition Principles Agreement, Clause 1 (3) states:

Without limiting the matters that may be taken into account, where this Agreement calls:

(a) for the benefits of a particular policy or course of action to be balanced against the costs of the policy or course of action;

(b) for the merits or appropriateness of a particular policy or course of action to be determined; or

(c) for an assessment of the most effective means of achieving a policy objective;

the following matters shall, where relevant, be taken into account:

(d) government legislation and policies relating to ecologically sustainable development;

(e) social welfare and equity considerations, including community service obligations;

(f) government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;

(g) economic and regional development, including employment and investment growth;

(h) the interests of consumers generally or a class of consumers;

(i) the competitiveness of Australian business; and

(j) the efficient allocation of resources.

Pig Industry Act 1986

1. The *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* are referred to the Committee of Officials for evaluation and report by 31 January 1999. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

   (d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* seek to address;

   (b) clarify the objectives of *the Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986*;

   (c) identify whether, and to what extent, the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* restrict competition;

(d) identify relevant alternative to the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

(f) identify the different groups likely to be affected by the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Pig Industry Act 1986* and *Pig Industry (Transitional Provisions) Act 1986* and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and, where appropriate, after consideration by Cabinet.

Pooled Development Funds

1. The Pooled Development Funds (PDF) Program is referred to a Taskforce of seconded officials for evaluation. The Taskforce is to consider and report on:

(a) the Program's appropriateness, that is whether government intervention of this nature is warranted on market failure or

other grounds and if so, whether the economic benefits of intervention outweigh its economic costs; and

(b) the Program's effectiveness and efficiency, that is, whether the program is achieving its objectives in a least cost manner.

2. Without limiting the ambit of the task force's investigation of the PDF Program's appropriateness, effectiveness and efficiency, the task force is explicitly directed to:

   (a) clarify and assess the appropriateness of the PDF Program's objectives;

   (b) identify, analyse and assess the economic costs and benefits flowing from the program, with particular reference to identifying any restrictions on competition, and to the effect of those restrictions on competition and the economy more generally;

   (c) assess whether there are alternative means, including non-legislative means, for achieving PDF objectives more effectively;

   (d) consider and report on any matters that might bear on the program including: the competitiveness of Australian businesses; economic and regional development (including employment and investment growth); interests of consumers or a class of consumers; ecologically sustainable development; social welfare or equity; government policies relating to matters such as occupational health and safety, industrial relations and access and equity; and

   (e) assess the impact of the PDF Program on small business, and if appropriate, also report on amendments to administration of the program to reduce any compliance and paperwork burden on small business associated with the program.

3. In undertaking the evaluation the taskforce is to consult with the PDF Board, key interest groups and affected parties.

4. On the basis of the above, the Taskforce is to report, and make recommendations, as to whether the PDF Program should continue in its present or modified form, to the Minister for

Industry, Science and Tourism by 30 June 1997. Subject to the Minister's agreement, the report, including the basis of its findings and recommendations, will subsequently be made publicly available.

5. The Government will announce its intention in relation to the PDF Program in the context of the 1998-99 Budget.

Primary Industries Levies Acts and related Collection Acts

1. The Primary Industries Levies Acts and related Collection Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 December 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

    (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self-regulation;

    (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

    (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

    (d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee of Officials should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Primary Industries Levies Acts and related Collection Acts seeks to address;

   (b) clarify the objectives of the Primary Industries Levies Acts and related Collection Acts;

   (c) identify whether, and to what extent, the Primary Industries Levies Acts and related Collection Acts restricts competition;

   (d) identify relevant alternatives to the Primary Industries Levies Acts and related Collection Acts, including non-legislative approaches;

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Primary Industries Levies Acts and related Collection Acts and alternatives identified in (d);

   (f) identify the different groups likely to be affected by the Primary Industries Levies Acts and related Collection Acts and alternatives;

   (g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

   (h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

   (i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the Primary Industries Levies Acts and related Collection Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Department of Primary Industries and Energy intends to announce what action is to be taken, after obtaining advice from the Minister, and where appropriate, after consideration by Cabinet.

Radiocommunications Act 1992

1. The *Radiocommunications Act 1992* (the Act) and related Acts and subordinate legislation, are referred to the Taskforce of Officials (the Taskforce) for review by 30 June 1998. The review is to evaluate the appropriateness, effectiveness and efficiency of spectrum management provided for in the Act and related legislation.

2. In undertaking the review, the Taskforce is to advertise nationally for submissions, consult with key interest groups and affected parties, and publish a report.

3. The Taskforce is to inquire into the most appropriate arrangements for achieving the objectives of the Act, taking into account the costs and benefits to the community and radiocommunications users, and having particular regard to:

   (a) the efficient use of spectrum in an environment where access to spectrum has an increasing economic value and uses of spectrum are changing;

   (b) Australia’s international obligations in relation to spectrum management;

   (c) the most appropriate arrangements for licensing the use of radiofrequency spectrum, and, in that context:

   - the rights and obligations that should attached to a licence of any type;
   - the most appropriate methods for calculating fees and taxes relating to licensing, spectrum use and spectrum

management in general, based on the principle that fees should be efficient, transparent and equitable;

- the appropriate periods for a licence of any type, including whether it should be finite with renewal rights; and
- the most appropriate methods for regulating the use of spectrum for satellite services;

(d) the most appropriate arrangements for providing for new uses, or users, of spectrum whether occupied or unoccupied, with particular regard to:

- the criteria for decisions and process to be followed to allow or facilitate new uses or users;
- the treatment of incumbent licensees and other users of the relevant spectrum;
- the costs of changes in spectrum usage, and who should bear them; and
- the respective roles of the parties involved in spectrum usage changes, namely any incumbent users/licensees, the prospective new user/licensee, and the radiocommunications regulatory body;

(e) the most appropriate arrangements for providing the public authority and community service uses of spectrum, and the payment for such use;

(f) whether, and what, special provision should be made for:

- any radiofrequency requirements relating to the fulfillment of universal service obligations under telecommunications legislation for the provision of services;
- uses of spectrum relating to defence, national security and intelligence; and
- the interface between the radiocommunications and broadcasting regimes;

(g) the effectiveness of the technical regulation regime for spectrum;

(h) the need for the radiocommunications regulatory body to promote industry self-regulation by various means, including the delegation of powers to other bodies;

(i) whether there is scope to reduce the costs of regulation, particularly the compliance costs and paper work burden on small business, including through such measures as promoting the use of electronic commerce; and

(j) the most appropriate enforcement mechanisms for the Act.

4. The report of the Taskforce should:

(a) cover the matters referred to in paragraph 3 and make recommendations relating to those matters;

(b) identify the benefits and costs to the community and industry (including business, manufacturers and licensees) of options for regulatory arrangements for spectrum management;

(c) include an assessment of the effect of current spectrum regulation on competition in the delivery of communications services, and on Australian business generally;

(d) include an assessment of the impact of the legislation being examined on small business and report on ways to reduce the compliance and paperwork burden associated with the legislation;

(e) include an assessment of the Australian approach to spectrum management in terms of international benchmarking;

(f) list the individuals and groups consulted during the review, and outline their views; and

(g) be published at the time of the Government's decisions on its recommendations, or earlier.

1. The *Torres Strait Fisheries Act 1984* and related Acts, and associated regulations, are referred to the Committee of Officials for evaluation and report by 31 July 1998. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can only be achieved by restricting competition. Alternative approaches which may not restrict competition include co-regulation, quasi-regulation and self-regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

   (c) the need to promote consistency between regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication; and

   (d) compliance costs and the paper work burden on small business should be reduced where feasible.

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report of the Committee of Officials should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) the *Torres Strait Fisheries Act 1984* and related Acts seeks to address;

(b) clarify the objectives of the *Torres Strait Fisheries Act 1984* and related Acts;

(c) identify whether, and to what extent, the *Torres Strait Fisheries Act 1984* and related Acts restricts competition;

(d) identify relevant alternative to the *Torres Strait Fisheries Act 1984* and related Acts, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

(f) identify the different groups likely to be affected by the *Torres Strait Fisheries Act 1984* and related Acts and alternatives;

(g) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate;

(h) determine a preferred option for regulation, if any, in light of objectives set out in (2); and

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Torres Strait Fisheries Act 1984* and related Acts and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. Within 6 months of receiving the Committee of Officials report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration with Cabinet.

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Government's Legislation Review Schedule, refer Part X of the *Trade Practices Act 1974* and associated regulations to the Productivity Commission for inquiry and report within six months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. Part X of the *Trade Practices Act 1974* is the regulatory regime for international liner cargo shipping operations in Australia. It describes the conditions under which international liner cargo shipping operators are permitted to form conferences to provide joint liner shipping services for Australian exporters and importers.

Scope of Inquiry

3. The Commission is to report on the appropriate arrangements for regulation of international cargo shipping services, taking into account the following objectives:

   (a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

   (b) regard should be had to the effects on the access of Australian exporters to competitively priced international liner cargo shipping services that are of adequate frequency and reliability; public welfare and equity; economic and regional development; consumer interests; the competitiveness of business including small business; and efficient resource allocation; and

   (c) the Government's commitment to accelerate and strengthen the micro-economic reform process, including through improving the competitiveness of markets, particularly those

which provide infrastructure services, in order to improve Australia's economic performance and living standards.

4. In making assessments in relation to matters in paragraph (3), the Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Commission should:

   (a) identify the rationale for Part X, quantifying issues as far as reasonably practical;

   (b) assess whether Part X satisfies the rationale identified in (a);

   (c) identify if, and to what extent, Part X restricts competition;

   (d) identify relevant alternatives to Part X, including the authorisation processes in Part VII of the *Trade Practices Act 1974* and non-legislative approaches, and the extent to which these would achieve the rationale identified in (a);

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs, impacts (including with respect to predictability of outcome on the standards of shipping services provided), and cost effectiveness of Part X and the alternatives identified in (d);

   (f) identify the liner cargo shipping regimes of Australia's major trading partners and determine the compatibility of the alternatives identified in (d), and Part X, with those regimes;

   (g) identify the different groups likely to be affected by Part X and alternatives identified in (d);

   (h) list the individuals and groups consulted during the review and outline their views;

   (i) determine a preferred option for regulation, if any, in light of objectives set out in paragraph (3); and

   (j) examine possible mechanisms for increasing the overall efficiency of Part X.

5. In undertaking this review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

6. The Government will consider the Commission's recommendations and its response will be announced as soon as possible after the receipt of the Commission's report.

Trade Practices Act 1974 — Subsections 51(2) and (3)

I, PETER COSTELLO, hereby in accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council subsections 51(2) and 51(3) (exemption provisions) of the *Trade Practices Act 1974 (TPA)* for inquiry and report within nine months of receipt of this reference.

2. To meet the requirements of the Competition Principles Agreement (CPA) legislation/regulation which restricts competition should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches.

3. In undertaking this inquiry the Council should have regard to:

   (a) relevant Federal and State industrial relations legislation and international agreements relating to labour that recognise collective bargaining;

   (b) the common law doctrine of restraint in relation to restrictive covenants pertaining to employment, partnerships, and the protection of goodwill in the sale of a business;

   (c) standards made by the Standards Association of Australia;

   (d) the Government's obligations under intellectual property treaties and conventions arising from Australia being a signatory to various International Intellectual Property Agreements and Conventions, including the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;

   (e) Australian intellectual property legislation including the *Copyright Act 1968*, the *Designs Act 1906*, the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Circuit Layouts Act 1989* and the *Plant Breeder's Rights Act 1994*;

(f) other nations' experience with provisions similar to s51(2) and s51(3) of the TPA (that is provisions that provide/allow for specific exemptions from the application of general competition laws);

(g) consequential effects that the exemption provisions have through the Competition Code in each State and Territory; and

(h) any other matters the Council considers relevant to this inquiry.

4. The Council is to have regard to the analytical requirements for regulation assessment by all Australian governments set out in the CPA. Without limiting the scope of the reference, the final report from the Council should:

(a) identify the nature and, as far as reasonably practical, the magnitude of the social and economic problems that subsections 51(2) and 51(3) (exemption provisions) of the TPA seek to address;

(b) clarify the objectives of the exemption provisions and determine whether these objectives continue to be relevant;

(c) identify whether, and to what extent, the exemption provisions allow certain individuals/corporations to engage in specific anti-competitive conduct that may otherwise be prohibited by the general prohibitions in Part IV of the TPA;

(d) identify relevant alternatives to the exemption provisions, including non-legislative approaches;

(e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the exemption provisions and alternatives identified in (d) on the Australian economy;

(f) list the individuals and groups that provided written submissions and/or were consulted during the review and take into account their views;

(g) determine a preferred option for regulation — that is, whether the exemption provisions should be abolished, modified or maintained; and

(h) advise on possible mechanisms for monitoring and reviewing any changes to the exemption provisions after the Government's announced response.

5. In undertaking the review, the Council is to advertise nationally, take written submissions, consult with key interest groups and affected parties, and release a draft report or options paper for comment prior to a final report.

6. Upon receipt of the Council's final report, the Government will consider the recommendations made and announce what action is to be taken as soon as possible.

Tradesmen's Rights Regulation Act 1946

The review will be undertaken by a committee of senior officers from:

- Department of Workplace Relations and Small Business (Chair);
- Department of Immigration and Multicultural Affairs;
- National Office of Overseas Skill Recognition; and
- Department of Finance and Administration.

The committee will also include appropriate independent persons from the community.

The Office of Regulation Review will provide advice to the committee on the legislation review process as required.

The committee will:

1. clarify the objectives and describe the operations of the *Tradesmen's Rights Regulation Act 1946* (TRR Act) and the role of Trades Recognition Australia (TRA), including in the administration of the migration program;

2. assess the appropriate role, if any, for the Federal Government in the recognition of trades skills by business and the wider community. In considering this issue the committee should be guided by recognised principles for government involvement,

such as the existence of market failure and welfare or equity considerations;

3. take into account any matters that bear on the efficiency, effectiveness and equity of TRA and the TRR Act including, where appropriate, social welfare and equity considerations; government legislation and policies relating to vocational training, occupational health and safety, workplace relations and access and equity; economic development, including employment and investment growth; and the competitiveness of Australian businesses;

4. examine the impact of the TRR Act and TRA on individuals, business and the community in general and determine:

   - whether there are any costs for business or any restrictions on competition (particularly in the labour market);
   - whether there are any economic benefits; and
   - the balance of costs (including compliance costs of users as well as the full administrative costs of TRA and the TRR Act) and benefits;

5. have regard to any other relevant reviews and legislation which affects skills recognition and/or occupational registration;

6. assess the impact of the TRR Act and TRA on small business and report on ways to reduce any compliance and paper work burden;

7. examine the efficiency of the administration of the TRR Act and of TRA's operations, including interaction with state/territory recognition mechanisms;

8. consider alternative means for achieving the same objectives; including non-legislative, state/territory government and private sector-based approaches. This will include consideration of the ability of the private market to provide the necessary services and relevant equity, efficiency and qualitative issues; and

9. consider, as appropriate, any legislative amendments to the TRR Act, its repeal or its replacement with a new Act.

The committee will consult with relevant interested parties, including:

- TRA users;
- employer and employee bodies currently party to the operations under the TRR Act;
- the Department of Defence;
- representatives of the ethnic community; and
- State and Territory training authorities.

The consultation process will include the invitation of formal submissions through national press advertisement.

The committee will finalise the review and report to the Minister for Workplace Relations and Small Business by July 1998. The report will address the committee's findings and its basis for them, and will include recommendations. The report will be publicly available.

2 Competitive Neutrality

2.1 Why implement Competitive Neutrality?

The *Competition Principles Agreement* (CPA) establishes a policy of competitive neutrality (CN). 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 exemptions from the payment of taxes and charges or compliance with planning regulations. These advantages may be sufficient to enable the government business to undercut private sector competitors, as well as provide an effective barrier to the entry of potential competitors.

If consumers choose to purchase from the lower priced government provider, the production and investment decisions of both that business and actual and potential competitors will be influenced. If the government business is not otherwise the least cost producer, the allocation of resources toward production by this business is 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 toward 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, CN does encourage greater transparency and efficiency in their provision.

2.1.1 Which government activities are subject to Competitive Neutrality?

The *Commonwealth Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises (GBEs), Commonwealth share limited companies and Commonwealth Business Units to be 'significant business activities' and, consequently, required to apply CN.

- Designated GBEs are legally separate from the Commonwealth Government, being either a statutory authority established under enabling legislation or a Commonwealth *Corporations Law* company. Their principal function is to sell goods and services for the purpose of earning a commercial rate of return and paying dividends to the Budget.
- Commonwealth share-limited companies are established under *Corporations Law*. Where not designated as a GBE, these companies need not earn a commercial rate of return and are generally financed through subsidies from the Budget and/or receipts from levies or industry taxes. In certain circumstances, they may borrow from commercial markets.

- Business Units are separate commercial activities within a Commonwealth Department. They are distinct in an accounting, but not a legal sense, and have access to the Commercial Activities Fund of the Commonwealth Public Account.

Other commercial activities undertaken by Commonwealth authorities and Departments that do not fall within these categories but which meet the established definition of a 'business' and have commercial receipts exceeding $10 million per annum, are assessed on a case by case basis for the requirement to apply CN.

These activities include bids by Commonwealth Government in-house units for activities subject to the *Competitive Tendering and Contracting Guidelines* issued by the Commonwealth Department of Finance and Administration.

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

- there must be user 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.

Activities that meet these criteria and have a turnover in excess of $10 million per annum are also considered to be significant business activities.

However, commercial business activities with a turnover under $10 million per annum may be required to implement CN arrangements following a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* Section 2.3). Such activities may choose to implement CN principles on a notional basis to pre-empt a complaint on the grounds of an unfair competitive advantage.

CN is required to be implemented only where the benefits of this course of action exceed the costs, and it is cost effective to do so. This requires consideration of the same matters identified in relation to the public

interest test for legislation review, including social welfare and equity issues such as community service obligations.

Commonwealth statutory authorities and *Corporations Law* companies are subject to the governance and financial accountability arrangements established under the *Commonwealth Authorities and Companies Act 1997*. All other government bodies are subject to the provisions of the *Financial Management and Accountability Act 1997*.

2.1.2 What does the application of Competitive Neutrality require?

The *Commonwealth Competitive Neutrality Guidelines for Managers* provides assistance with the practical application of the CN principles, as identified in the CNPS, to the wide range of Commonwealth significant business activities.

In general terms, CN 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 CN 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 CN components.

The actual application of CN 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 pay the same taxes as paid by the majority of its major competitors. A practical example of this is the CN arrangements applying to the Commonwealth Scientific and Industrial Research Organisation (*see* page 206).

Example 2

Where commercial activities are undertaken within a non-GBE statutory authority, CN 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, CN 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.

Example 3

Commonwealth businesses in the process of being corporatised or restructured along commercial lines may have a lower pre-tax rate of return target set to accommodate identified public sector employment cost disadvantages for a transitional period of up to three years.

Box 7 clarifies some common misconceptions with regard to CN.

Box 7: Competitive Neutrality — Some Misconceptions

- CN does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as CSOs.
- CN does not have to be applied to Commonwealth business activities where the costs of implementation would outweigh the expected benefits.
- CN is neutral with respect to the nature and form of ownership of business enterprises. It does not require privatisation of Commonwealth 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).
- CN does not require outsourcing of Commonwealth activities — but when public bids are made under competitive tendering and contracting (CTC) arrangements, they must be CN compliant. As a result, in-house units should not have any unfair advantage over other public or private sector 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 Community Service Obligation (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 undertake or 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 45 cents).

CN does not prevent the provision of CSOs, but it does establish certain requirements in terms of their costing, funding and interaction with other CN 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.

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 by legislation, Government decision or publicly available directions from shareholder Ministers (for example, identified in the annual report of the relevant Commonwealth 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 CN 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 CN arrangements, no adjustment should be made to the commercial rate of return target applied to the service provider to accommodate CSOs.

2.2 Commonwealth Entities and Activities Subject to Competitive Neutrality

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

CN arrangements were required to be implemented by 1 July 1998. Commonwealth progress toward ensuring their adoption by all significant business activities is summarised in Appendix B.

Detailed information concerning the application of CN to specific organisations or activities is provided below.

2.2.1 Government Business Enterprises

Government Business Enterprises (GBEs) are required to have their CN arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. The CN guidelines require that GBEs:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents (to have commenced by 1 July 1997);
- earn a commercial rate of return on assets as determined by their shareholder Minister(s);
- 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
- where borrowing from the Budget, pay a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

Australian Defence Industries Limited

The sale of Australian Defence Industries Limited (ADI Ltd) was announced on 17 August 1999.

Prior to it being sold ADI Limited was found to comply with CN principles.

It does have an advance from the Department of Defence to fund regeneration of ADI land polluted by the Commonwealth. This loan is not subject to interest payments other than indexation amounts. However, its private sector borrowings are short-term local borrowings, with interest charged at commercial rates. Furthermore, while ADI Ltd does have a Commonwealth loan, the established interest rate includes a margin based on the former Commonwealth Borrowing Levy.

Given the then advanced stage of the sale process, no further action with regard to CN compliance was undertaken.

Australian Industry Development Corporation

The Australian Investment Development Corporation Limited (AIDC Ltd), a commercial subsidiary of the Australian Industry Development Corporation, was sold to a private consortium on 3 February 1998. AIDC Ltd was a specialised investment banking business, providing project and structured finance services, principally to infrastructure and resource companies. The company's principal liability was its debt to the Australian Industry Development Corporation, arising from its borrowings under the Corporation's Commonwealth Government Guarantee.

The sale achieved the repayment of AIDC Ltd's $3.2 billion debt to the Corporation (which then repaid $600 million of its Commonwealth guaranteed borrowings) and delivered proceeds to the Commonwealth of around $100 million from the sale of its assets.

The Corporation has no residual CN obligations.

Australian National Line Limited

The main commercial businesses comprising Australian National Line Limited (ANL) were sold during 1998-99, with the exception of vessel leases involving four ships chartered to, and operated by, other companies. In this context, CN principles were not applied during 1998-99.

That part of ANL that remains as a wholly-owned Commonwealth share-limited company is now known as Australian River Co Ltd

(ARCO). As the responsibilities of ARCO will be purely financial, action is underway to make the company a subsidiary of the Australian Industry Development Corporation, with joint responsibility between the Minister for Industry, Science and Resources and the Minister for Finance and Administration.

Australian National Railways Commission

The sale and transfer of Australian National Railways Commission (AN) undertakings to other businesses was completed in 1997-98, with the rail access business and assets transferring to the Australian Rail Track Corporation from 1 July 1998. AN has no remaining business undertakings and will be wound up in 2000.

In this context, CN principles were not applied during 1998-99.

Australian Postal Corporation

Australia Post, and its subsidiary Postcorp Pty Ltd, pay all Commonwealth, State and local government taxes and charges.

(An independent review of its credit rating is currently being undertaken by a credit ratings agency, and will provide the basis for determining any debt neutrality margin to apply to Australia Post borrowings in respect of 1998-99.

In developing legislation to give effect to the Government's decision in response to the National Competition Council (NCC) review of the *Australian Postal Corporation Act 1989*, consideration is being given to the implementation of the CN issues identified in the NCC report (*see* below).

In addition, arrangements will be put in place to:

- require transparency of Australia Post's accounts to enable proper costing of its statutory CSO; and
- to assure competitors that Australia Post is not cross-subsidising from the monopoly reserved services to the non-reserved services it provides in competition with private operators.

It is also proposed that the legislation will include arrangements for the oversight of the accounting transparency arrangements by an independent body.

1998 NCC Review of the Australian Postal Corporation Act 1989 — recommendations relating to competitive neutrality

To ensure that Australia Post's business is competitively neutral, the NCC recommends that:

- if there are any taxes, rates and charges remaining to which Australia Post is not currently subject, these should be imposed on Australia Post without delay in accordance with the *Competition Principles Agreement*;
- the *Customs Act 1901* be amended promptly to ensure that all postal operators are subject to a threshold to the same value;
- any provisions which grant Australia Post employees and contractors an exclusive right to operate motorcycles on footpaths be amended to ensure other postal deliverers can obtain similar exemptions when required;
- the following sections of the *Australian Postal Corporation Act 1989* should be removed:
  - section 32, which gives Australia Post the right to impose its own terms and conditions upon which its service can be supplied;
  - section 34, which exempts Australia Post from liability for any loss or damage suffered due to an act or omission by Australia Post;
  - section 46, which gives the Minister the power to influence whether Australia Post undertakes significant business activities;
  - section 90B, which prohibits any State or Territory law from discriminating against Australia Post; and
  - section 90D, which restricts the application of State and Territory building and construction laws to Australia Post prior to 1 January 1991;

- the following be amended as specified:
  - section 48, which requires Australia Post to comply with general policies of the Commonwealth Government if notified to do so by the Minister, be amended to ensure that the Minister must first table the applicable general policies in Parliament; and
- the following sections be extended to cover all postal operators:
  - section 90V, so that all participants are required to place a notification on an article that has been opened for any purpose or reason;
  - Division 2, Part 7B, so that all participants are required to comply with general privacy requirements; and
  - section 101, so that all participants are granted title to all postal articles for the purpose of any legal proceeding and that the property rights of customers be clarified.

The NCC also recommended:

- the right of Australia Post to erect posting boxes should be maintained for ordinary red posting boxes suitable for posting standard letters. Otherwise, Australia Post should be subject to the same requirements as other postal service providers; and
- detailed auditing and accounting information on Australia Post's activities, to provide for transparency of the financial relationships between different elements of the business (for example, retail operations, reserved services and CSO funded services).

Australian Rail Track Corporation

The Australian Rail Track Corporation (ARTC) was established as a commercial entity in February 1998. Its primary purpose is to attract private operators to rail operations on the interstate network by providing a single point of access for this network.

ARTC is required to meet commercially driven shareholder requirements, raise capital in the commercial finance sector, meet Government set commercial rate of return targets and achieve

reasonable returns by way of a dividend payment to the Budget. As a commercial entity, it is subject to all Commonwealth and State taxes.

Australian Technology Group Limited

The Australian Technology Group Limited (ATG) was formed in 1994, by the Commonwealth and three private shareholders, in response to a recommendation of the Task Force on Commercialisation of Research in its report Bringing the Market to Bear on Research. This report found that Australia's technology transfer bodies (for example, commercial arms of universities) and venture capital firms did not have the resources, expertise or charter to source, supply or negotiate early stage commercialisation of technology in an adequate manner.

ATG is a technology commercialisation corporation set up to provide early stage venture capital and management expertise, with its staff working with investee personnel to develop a viable business plan and to bring new technology to market. It was established to operate entirely in the private sector of the early stage capital venture market and is governed by a Board of Directors formed by the shareholders. Under this arrangement, ATG derives no benefits from Commonwealth ownership and satisfies all CN requirements.

A review of ATG is currently being carried out by the Office of Asset Sales & Information Technology Outsourcing (OASITO), as part of the Government's ongoing broader review of equity holdings in all GBEs. The review is being coordinated by a working group representing OASITO, the Department of Finance and Administration and the Department of Industry, Science and Resources, who have retained the services of Deloitte Corporate Finance and Corrs Chambers Westgarth to conduct a scoping study.

The study examined the various options for divestment and/or continued management of involvement of the Commonwealth's interest in ATG. The final report was completed in March 1999. The working group is using the information presented in the report to develop an ATG strategy in consultation with the ATG Board. The review is expected to be completed by the end of 1999.

Comland

Although it did exist from 30 June 1998, Comland was not trading in 1998-99. However, the company is engaged in a land development joint venture, and as such may in future face significant State tax liabilities.

Defence Housing Authority

The Minister for Defence Industry, Science and Personnel and the Minister for Finance and Administration have announced that the Defence Housing Authority would be retained in Commonwealth ownership. A number of structural and corporate governance arrangements are still subject to discussion, including some CN issues.

Employment National Limited & Subsidiary

Employment National Limited and its subsidiary company, Employment National (Administration) Limited were established in May 1998.

Employment National paid all Commonwealth, State and Territory taxes in 1998-99, and a post tax rate of return target was established.

In relation to its bids for Job Network contracts, Employment National is treated in the same manner as other tenderers. The operations of Employment National Limited and the competitive tendering process for the Job Network contracts both comply with CN principles.

Essendon Airport Limited

Essendon Airport Limited (EAL) is a Commonwealth owned *Corporations Law* company established to operate Essendon Airport, under lease from the Commonwealth.

EAL is subject to the same regulatory regime as privatised airports. The company is subject to the same taxes as other airports. An appropriate rate of return target has not been established.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for

Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

Federal Airports Corporation

The Federal Airports Corporation (FAC) ceased operating on 24 September 1998.

Health Services Australia Limited

Health Services Australia (HSA) was established on 1 July 1997 as a wholly Commonwealth owned share limited *Corporations Law* company. It was formerly the Australian Government Health Service, a branch within the (then) Department of Health and Family Services.

Its principal function is to provide accessible, expert and independent health and medical services in the corporate, occupational and related sectors.

During 1998-99, HSA was subject to an operating structure consistent with its competitors. It pays all Commonwealth taxes and tax equivalents of State and Territory taxes. Rate of return targets have been set by shareholder Ministers.

Goods and services are priced on a full cost allocation basis.

Medibank Private Limited

On 1 May 1998, ownership of Medibank Private Limited was transferred from the Health Insurance Commission to the Commonwealth. At this time, responsibility for the operation of Medibank Private was transferred to a new company, Medibank Private Limited, under the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*.

The principal function of Medibank Private Limited is to provide high quality health financing to the Australian public.

During 1998-99, Medibank Private was subject to the same Commonwealth, State and Territory tax regime as its competitors. This

included its registration under the *National Health Act 1953* as a not-for-profit organisation.

Goods and services are priced on a full cost allocation basis.

Snowy Mountains Hydro-Electric Authority

Legislation to corporatise the Snowy Mountains Hydro-Electric Authority (SMHEA) was passed by the Commonwealth, New South Wales and Victoria in the second half of 1997.

Once corporatised, Snowy Hydro Limited (the name of the corporatised body) will be subject to all State and Commonwealth taxes and the debt currently carried by SMHEA will be re-financed on commercial terms.

Implementation agreements are currently being negotiated between the three Governments and will be finalised following completion of the Snowy Water Inquiry.

Sydney Airports Corporation Limited

The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned *Corporations Law* company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth.

It is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target has been established.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

Telstra Corporation Limited

Telstra complies with all aspects of the Commonwealth's CN arrangements.

The Government intends to further reduce its ownership stake in Telstra by offering up to a further 16.6 per cent of Telstra shares for sale. After the Telstra 2 share offer the Commonwealth will own at least 50.1 per cent of the issued shares and will continue to have a controlling interest. Telstra pays all Commonwealth, State and Territory taxes and charges. Its credit rating is determined on a 'stand alone' basis by the market. Telstra's debt neutrality margin for 1998-99 was zero for CN purposes.

2.2.2 Commonwealth Business Units

CN arrangements applied to Commonwealth Business Units are to be approved by the responsible portfolio Minister. The CN guidelines require Business Units:

- pay Fringe Benefits Tax (FBT) and Wholesale Sales Tax (WST), unless an exemption is available for reasons other than their public ownership;
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration; and
- where borrowing from the Budget, pay a commercial interest rate determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

Artbank

Artbank has no significant CN issues (there has been no change to its activities from the previous reporting period).

Australian Government Analytical Laboratory

In March 1997, a Memorandum of Understanding (MOU) between the (then) Minister for Finance and the (then) Minister for Administrative Services was agreed for the purpose of establishing a framework for the

operations of the Australian Government Analytical Laboratory (AGAL).

The MOU required AGAL to operate under an individual Group 2 Trust Account (now FMA Commercial Activities Fund) and to comply fully with the Commonwealth's CN arrangements requirements.

In 1998-99, AGAL made tax equivalent payments in lieu of indirect taxes consisting of payroll tax, WST and state government stamp duties.

AGAL operates on a debt-equity structure established in line with the MOU, which provides for an interest charge based on the interest rate determined by the Department of Finance and Administration.

Goods and services are priced on a full cost allocation basis.

Rate of return requirements have been set. However, no payments have been made in 1998-99 in light of accumulated losses from previous years.

Members of supplier panels set up to deliver outputs for AGAL's CSO funded Public Interest Program have been required to declare they operate under a corresponding CN regime.

Australian Government Solicitor

During 1998-99, the Australian Government Solicitor (AGS) operated as a body corporate under section 55E(1) of the *Judiciary Act 1903*. AGS has been financially and administratively separate from the Attorney-General's Department since 1 July 1997, and subject to the *Financial Management and Accountability Act 1997* from 1 September 1998.

On 1 September 1999, AGS became a statutory authority, subject to the *Commonwealth Authorities and Companies Act 1997* and prescribed as a GBE.

Under the *Judiciary Act*, AGS is exempt from taxation under State and Territory laws. However, provision exists for the Attorney-General and the Minister for Finance and Administration to establish a tax equivalent payment to be made by the AGS to the Commonwealth with respect to each year. The amount to be paid is to be calculated to ensure AGS does

not enjoy a net competitive advantage over competitors as a result of any exemption from taxation.

Corporate governance arrangements may also be established, including a requirement to pay a dividend to the Commonwealth and any other specified amount intended to ensure AGS does not enjoy any net competitive advantage as a result of its public ownership.

AGS currently operates on a full cost recovery basis. It does not provide any CSOs.

Australian Protective Service

The Australian Protective Service has incorporated CN arrangements into its pricing since 1 July 1998. These arrangements have been modified to reflect the recommendations of the Commonwealth Competitive Neutrality Complaints Office (*see* Section 2.3).

Australian Surveying and Land Information Group

Further to the extensive divestment and outsourcing activities undertaken in 1997-98 (*see* 1997-98 NCP annual report), the Australian Surveying and Land Information Group has:

- outsourced its core information technology services;
- awarded a contract to British Aerospace Australia to operate Yaragadee (WA) satellite laser ranging activity; and
- established a panel of mapping organisations to revise Australia's 1:100 000 scale topographic maps.

Australian Valuation Office

The Australian Valuation Office implemented CN during 1998-99.

National Transmission Agency

The National Transmission Network (NTN) is a network of broadcasting transmission facilities used primarily to broadcast television and radio programs of the Australian Broadcasting Corporation (ABC) and the Special Broadcasting Service (SBS). The NTN also accommodates

commercial and community broadcasters, and telecommunications and radiocommunications service providers.

On 30 April 1999, the Commonwealth sold the NTN to a private company, NTL Australia Pty Limited. The NTN had previously been operated by the National Transmission Agency, a separate cost centre within the Department of Communications, Information Technology and the Arts.

Removals Australia

Removals Australia (the Commonwealth's relocation brokerage business) operates on a cost recovery basis.

On 23 June 1999, the Minister for Finance and Administration announced the appointment of advisers for the sale of Removals Australia. It is expected that the sale will be completed by the end of 1999.

Royal Australian Mint

CN arrangements were applied to the Royal Australian Mint from 1 July 1998. These arrangements include establishment of a commercial rate of return based upon its gross performing assets (excluding items classified as CSOs), payment of wholesale sales tax, implementation of a tax equivalent regime for other taxes, formal ministerial agreement for its coin museum CSO and repayment of budget borrowings at commercial rates.

2.2.3 Commercial Business Activities (over $10 million per annum)

CN arrangements applying to significant commercial business activities provided by non-GBE statutory authorities or Departments are to be approved by the relevant portfolio Minister. The CN guidelines require significant commercial activities to:

- pay FBT and WST (unless exemptions are available to them for reasons other than their public ownership);

- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration;
- 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
- where borrowing from the Budget, pay a commercial rate of interest determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

Aged Care Standards and Accreditation Agency

Aged Care Standards and Accreditation Agency pays all Commonwealth and State taxes, with the exception of income tax, and a commercial rate of interest for budget borrowings.

Goods and services are priced on a full cost allocation basis.

Airservices Australia

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Government initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a function of ensuring the safe and efficient use of Australian airspace. The review reported in early 1998. This report has been considered by Government.

CN in the provision of services to airport operators by air traffic control providers — both Airservices Australia and other parties — has been addressed in the review. The Government has determined, and the Minister for Transport and Regional Services has stated publicly, that the Civil Aviation Safety Authority will develop a safety regulatory framework for the provision of air traffic control services by June 2000. Once this framework is in place and the necessary legislative

amendments have been made, alternative service providers will be able to compete in the market.

CN arrangements have not been implemented for Airservices Australia because it is currently a legislated monopoly. The reform process to allow competition is taking place and CN arrangements will be imposed when this process is complete.

A similar situation applies with respect to rescue and fire-fighting services.

En-route services are now and will remain an Airservices Australia monopoly, for technical reasons.

Albury-Wodonga Development Corporation

At the 1995 Albury-Wodonga Ministerial Council meeting, it was agreed that the Albury-Wodonga Development Corporation (AWDC) would be wound up over a five year period. Under the terms of this decision, the role of the AWDC is limited to the sale of its assets.

At the 1997 Ministerial Council meeting, the timeframe for the wind up of the Corporation was extended to eight years. It was also agreed that both New South Wales and Victoria would withdraw from the Albury-Wodonga Growth Centre Project subject to the repeal or amendment of the relevant State and Commonwealth legislation.

The amendments to the *Albury-Wodonga Development Act 1973* are due to be introduced into Federal Parliament. New South Wales and Victoria are also preparing legislation to facilitate their withdrawal from the project.

Army and Air Force Canteen Service

There are no major CN issues in relation to the retailing services of the Army and Air Force Canteen Service (the situation is unchanged from the previous reporting period).

Australian Broadcasting Corporation

The Australian Broadcasting Corporation (ABC) has two business areas subject to CN. These are ABC Enterprises (consumer goods) and its facilities hire activities. Responsibility for news, current affairs and international program sales was transferred to Enterprises and a new unit established to explore ABC Online business opportunities.

Discussions continued during the year on an appropriate CN model for these activities, including arrangements for tax equivalent payments.

A full accounting separation model for ABC Enterprises was implemented during the year, which includes a separate Enterprises ledger, commercial costing and an internal transfer pricing system. From 1 July 1999, Enterprises will pay tax equivalents to the ABC 'parent'. The ABC has also undertaken to separately publish Enterprises' financial statements in its annual report each year.

Australian Hearing Services

CN implementation arrangements are currently being developed for Australian Hearing Services (AHS), reflecting the intention that it be corporatised.

AHS currently pays FBT. For 1998-99, other potential tax liabilities have been shown as contingent liabilities. A commercial rate of return target is currently under consideration.

The prices of AHS's goods and services will reflect future CN arrangements.

AHS provides various CSOs purchased by the Department of Health and Aged Care.

Australian National University

The Ministerial Council for Employment, Education, Training and Youth Affairs (MCEETYA) and the Council of Australian Governments (COAG) Secretariat endorsed a CN implementation strategy for all universities (outlined below).

The Australian National University is expected to conduct its commercial activities in accordance with this strategy. Efforts are currently being made to ensure that universities have a clear understanding of how to fully cost their activities. This includes the development of national pricing guidelines for universities.

MCEETYA and COAG Secretariat: Competitive Neutrality Implementation Strategy For Universities

Recommendation

That Ministers note that a common approach to the implementation of competitive neutrality to universities should reflect the key principles of the Competition Principles Agreement that competitive neutrality should be applied to significant business activities and the benefits of implementation should outweigh the costs.

As a common approach Ministers agree that:

- the issues of competitive neutrality in respect of undergraduate and postgraduate education, enabling courses and libraries be considered further after the Commonwealth Review of Higher Education Financing and Policy has reported. The Commonwealth, States and Territories will wish to consider the recommendations made by the Review Committee on these issues;
- those activities of universities, which are undertaken on a fee for service basis but are also intrinsic to achieving the social, cultural and economic objectives of the higher education program, be subject to minimalist pricing principles to achieve transparency. Such activities would include research and development, consultancies, continuing education and residential colleges:
  - while the pricing principles would include all commercial costs, such as notional infrastructure costs and tax, their use would not preclude cross-subsidies because of the spillover benefits between commercial activities and non-commercial activities;
- activities which compete in a wider market place to a significant degree but are instrumental in achieving the objectives of the higher education program (such as residential accommodation,

catering, bookshops) should be structurally separate and subject to minimalist pricing principles to achieve transparency. While these activities should not be required to make a fully commercial return on resources, any concessions that a university allows must be directed to those services directed within the university. Services provided in the wider market place should be on a fully competitively neutral basis, including a return on resources and notional taxes. Significance will need to be judged in the context of the specific market;

- where activities are significant and purely commercial in an external market (such as property development and manufacturing for retail and wholesale sale) a fully commercial regime should apply. Significance will need to be judged in the context of the specific market; and
- the Chair of MCEETYA send the recommendations to the Council of Australian Governments with a view to that Council adopting the recommendations for the higher education sector.

That Ministers agree to further work by the Taskforce as follows:

- the development of practical pricing guidelines for commercial activity undertaken by universities and report on progress to Ministers at the next MCEETYA meeting. Pricing principles would have to pay attention to the cost of adopting particular accounting regimes; and
- addressing any unresolved issues, including tax issues and the definition of structural separation.

Australian Wheat Board

From 1 June 1998 until 30 June 1999, the then statutory Australian Wheat Board (AWB) conducted its marketing, pooling and financing functions through subsidiary companies operating under *Corporations Law*. The wholly owned parent subsidiary (AWB Ltd) operates through two wholly owned subsidiaries: AWB (International) Ltd, which was responsible for pool marketing and grower payments; and, AWB (Australia) Ltd, which undertook domestic grain trading and other commercial operations. AWB Ltd itself provides financing and other services to the subsidiaries.

In 1998-99, the AWB's non-pooling activities, conducted through its separate subsidiary company, were supported by the levy based Wheat Industry Fund (WIF). Under CN principles, this subsidiary was subject to income tax and state/territory taxes. It was considered unnecessary to implement borrowing levy or commercial rate of return provisions given the expected limited impact of these measures and the impending privatisation of the AWB in 1999.

The imposition of taxation regimes on the commercial activities of AWB Ltd during 1998-99 revoked the AWB's previous taxation advantage. This change was aimed at improved competition on the domestic market for grains, with flow-on benefits to growers and end-users.

On 1 July 1999, AWB and its subsidiaries became grower owned and controlled. Government involvement ceased from this point. The levy on wheat sales to build up the WIF also ceased, and the WIF was converted to B-class shares in AWB Ltd (the grower owned parent company) to form its capital base.

The only role for the Commonwealth government with respect to wheat marketing after 1 July 1999 will be to provide the wheat export monopoly under legislation through the Wheat Export Authority. AWB (International) Ltd has been granted automatic rights to export wheat under this legislation.

Commonwealth Scientific and Industrial Research Organisation

On 24 September 1997, the (then) Minister for Industry, Science and Tourism advised the Commonwealth Scientific and Industrial Research Organisation (CSIRO) of the Government's decision regarding the application of CN. Specifically, CSIRO is required to:

- include commercial pre-tax rate of return (RoR) and taxation equivalent regime (TER) components in the charges for consulting and technical service activities undertaken; and
- use full cost pricing in the costing of research project bids, unless there are national interest considerations, and include allowances for tax and RoR targets if these are known to be incurred by competing bidders.

The Minister approved the framework for implementing CN in CSIRO on 11 May 1998, with CSIRO's policy on CN being released on 1 July 1998. The changes to CSIRO's costing and pricing policies apply to all new contracts entered into from 1 July 1998. All of CSIRO's commercial activities are now subject to CN principles and the CN complaints mechanism.

It is CSIRO policy that:

- all projects/activities should be costed to identify their full costs (including divisional and corporate overheads) to CSIRO;
- the pricing of commercial activities must be based on the perceived value to the client and estimate of their full costs;
- for technical and consulting services, the price must cover the estimated full costs and include commercial pre-tax RoR and TER components (a CN on-cost factor);
- for research projects, the price must cover the estimated full costs, unless there are national interest considerations, and include commercial pre-tax RoR and TER components (a CN on-cost factor) if tax and RoR requirements are known to be incurred by competing bidders; and
- all pricing decisions, including the estimate of costs, must be fully documented and retained for audit purposes as part of the risk assessment in the contract approval process.

To ensure transparency of funding arrangements, commercial activities are required to be structured on a project/activity basis to facilitate accounting separation and attribute all costs (including divisional overheads) on a project/activity basis.

The Government has agreed that CN does not apply to services provided by the National Research facilities administered by CSIRO, as there is no actual or potential competitor. These facilities are the Australia Telescope, the Australian Animal Health Laboratory, the Oceanographic Research Vessel *Franklin* and the National Measurement Laboratory.

Export Finance and Insurance Corporation

The Export Finance and Insurance Corporation (EFIC) undertakes activities to ensure that Australian exporters have access to competitive export finance, insurance and guarantee services.

There has been considerable progress in relation to the application of CN to EFIC. Export Finance and Insurance Corporation has split its operations into two separate businesses export finance (medium/long term business, not subject to CN) and short-tern credit insurance (subject to CN principles). National Interest Account business, which is conducted by EFIC on the government's behalf and is not subject to CN, has always been separately reported. Each business is now covered by a separate business plan contained within EFIC's corporate plan, with separate financial reporting. EFIC's financial accounts now also accord with the requirements of the *Insurance Act 1973*.

Legislation is currently before Parliament to address those CN matters that require amendment to the *Export Finance and Insurance Corporation Act 1991*. The specific measures contained in the Bill involve the application of a debt neutrality charge, guarantee charge and tax equivalent payments to EFIC's operations in the area of short term insurance contracts. The Bill also removes EFIC's current exemptions from the *Insurance (Agents and Brokers) Act 1984* and the *Insurance Controls Act 1984*.

Health Insurance Commission

Health Insurance Commission (HIC) CN obligations were essentially satisfied with the transfer of ownership of Medibank Private Limited to the Commonwealth on 1 May 1998 (*see* page 195).

HIC currently pays all Commonwealth and State direct and indirect taxes, excluding income tax. Goods and services are priced on a full cost allocation basis.

National Rail Corporation

The formal establishment period for the National Rail Corporation (NRC), during which shareholder Governments (Commonwealth, New

South Wales and Victoria) provided agreed payments to compensate the company for the high initial costs of inefficient functions transferred from shareholder rail authorities, ended on 31 January 1998.

The company operates on a commercial basis, with no CN compliance issues arising during the year 1998-99. However, the company was subject to a competitive neutrality complaint in October 1999.

NRC is subject to a sale process, which is expected to be completed in the year 2000.

Reserve Bank of Australia

The following Reserve Bank of Australia (RBA) businesses are subject to CN: Registry; Reserve Bank Information Transfer System (RITS); banking; specialised cash distribution; and, Note Printing Australia.

The registry business operates in a declining and competitive market, with the RBA losing the registry business of the Western Australian Treasury Corporation in December 1998 following a tender process. Because of its small size and uncertain future, the business has not been corporatised. However, a separate set of accounts, based on full cost allocation and other CN principles, has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1998-99 Annual Report.

RITS provides facilities for the electronic transfer and settlement of transactions in Commonwealth government securities (CGS) for members. Revenue is based on fees that reflect full cost recovery. RITS is also the platform used by the RBA to form the core of its Real Time Gross Settlement (RTGS) system for high value payments. RTGS is a non-contestable RBA function. Consequently, the RITS business for CN purposes covers only the business of electronic settlement of CGS. This business, because of its small size and a potential ownership change, has not been corporatised. However, a separate set of accounts, based on full cost allocation and other CN principles, has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1998-99 Annual Report.

The RBA provides banking services to the Commonwealth, some Commonwealth authorities and the South Australia Government. These services are largely payments and collection processing and related data transmission services. Over recent years, the RBA, at tender, has lost the business of the Tasmania, Western Australia and Australia Capital Territory Governments to the private banking system. Its principal customers are the Commonwealth Government and Departments. The Commonwealth is not obliged to bank with the RBA. Rather, the *Reserve Bank Act 1959* empowers the RBA to provide banking services to the Commonwealth '…in so far as the Commonwealth requires it to do so …'

During 1998-99, the RBA successfully implemented systems changes and procedures to enable the Government to devolve responsibility for banking arrangements to individual government agencies. As at 1 July 1999, the RBA had a direct relationship with over 75 agencies. This contrasts with the traditional arrangements, which were centralised through the Commonwealth Department of Finance and Administration (DoFA). As part of the devolution process, the RBA has split its banking business as follows:

- Commonwealth government accounts (core banking) will remain with the RBA and, where an agency's transactional banking is undertaken by a private sector bank, that agency's funds will be swept back to the RBA at the end of each day. This policy ensures that the Commonwealth does not lose the benefit of interest on funds lodged with the banking system overnight as well as facilitating the RBA's monetary policy operations. This part of the business is non-contestable, and will be subject to a formal MOU with DoFA. The RBA will charge DoFA for undertaking this work.
- During 1999-2000, it is expected that most agencies will market test their transaction processing banking business. To date, only DoFA has undertaken this process, with a private sector bank winning the account. The banking business, because of its uncertain nature, has not been corporatised. However, a separate set of accounts reflecting full cost allocation and other CN principles has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1998-99 Annual Report.

The RBA exited the specialised cash distribution business on 15 July 1998.

Note Printing Australia (NPA) was corporatised from 1 July 1998. NPA is accounted for separately in accordance with CN principles. It has completed its first year as a corporatised entity with stand-alone premises, accounts and an independent Board of Directors.

NPA operates as a commercial printer of Australian banknotes for the RBA. Its rate of return is above the benchmark rate and expected to continue that way. Its business activities are carried out in accordance with commercial objectives and a business plan.

Special Broadcasting Services

During 1997-98, the (then) Minister for Communications, the Information Economy and the Arts wrote to the Chairman of the Special Broadcasting Services (SBS), indicating that the SBS' current arrangements for raising advertising and sponsorship revenue (its major commercial activity) met CN requirements. The SBS is required to notify the Minister if these arrangements change or its competitive position improves.

The SBS Chairman has provided an assurance to the Minister that whenever SBS operates in a commercial market it will do so on a competitively neutral basis and it will not gain a net competitive advantage simply as a result of its public ownership.

Wool International

The *Wool International Privatisation Act 1999* was passed by the Federal Parliament on 31 May 1999, and received Royal Assent on 9 June 1999. Wool International (WI), the statutory authority responsible for the disposal of the wool stockpile, was converted to a *Corporations Law* company, known as Wool Stock Australia, on 1 July 1999. Ownership of the company, and the wool stockpile, has passed to WI unit holders, who have become shareholders of Wool Stock.

A Competitive Neutrality Working Group determined that CN policy did not apply to the sale of wool from the stockpile.

2.2.4 Other Commonwealth Activities

There are a number of non-significant Commonwealth business activities for which the application of CN principles is being considered or undertaken. They may also be required to implement CN as a result of a complaint to the Commonwealth Competitive Neutrality Complaints Office (*see* Section 2.3).

These non-significant business activities have to earn a commercial rate of return (set by their parent agency), pay WST and FBT (unless exemptions are available for reasons other than government ownership) and make tax equivalent payments for remaining Commonwealth indirect taxes.

Other CN costs may be incurred on an (auditable) notional basis, for example, payments of remaining Commonwealth direct taxes, State indirect taxes and debt neutrality charges.

Examples

While the **Bureau of Meteorology's** commercial activities are not significant, the Government is considering the application of CN to commercial meteorological services as part of its response to the report *Capturing Opportunities in the Provision of Meteorological Services.*

The **Australian Geological Survey Organisation, the Australian Bureau of Agricultural and Resource Economics (ABARE) and the Bureau of Resource Sciences** costing models include a tax equivalence regime and a proxy for a rate of return when costing for competitive bids.

A review of the operations of **Aboriginal Hostels Limited**, undertaken by an inter-departmental steering committee, commenced in February 1999. A draft final report was completed in September 1999. The draft report discusses, among other things, the application of CN to the company in the context of its CSOs.

2.2.5 Competitive Tendering & Contracting

Competitive Tendering and Contracting (CTC) is a process of selecting a preferred supplier from a range of potential contractors by seeking

offers and evaluating those offers on the basis of one or more selection criteria. This may involve a choice between an in-house supplier and external contractors (from either the private or public sector).

CN arrangements should be applied to all bids by Commonwealth Government 'in-house' units for activities subject to the *Competitive Tendering and Contracting Guidelines* issued by the Department of Finance and Administration. This ensures that in-house units compete on a comparable basis to private (and other public) sector competitors.

In practice this means:

- in undertaking market testing to determine whether or not to competitively tender for the supply of a particular good or service, CN requirements are to be incorporated in costing in-house supply;
- where it is determined to competitively tender for the supply of the good or service, that activity is to be regarded as a commercial activity. Any significant in-house bid needs to reflect the full cost of providing the good or service:
  - this includes an attribution for any shared and joint costs, payment of FBT and WST (on direct purchases), tax equivalent payments for remaining Commonwealth and State taxes, debt neutrality charges, 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, in house bids do not need to include a rate of return on such capital; and
- the Commonwealth purchaser of the good or service is entitled to require that all tender bids submitted by government owned or funded activities certify compliance with Commonwealth CN requirements;
- non-compliance could result in a complaint being made to the Commonwealth Competitive Neutrality Complaints Office (*see* Section 2.3).

CTC units with turnover (bid) under $10 million per annum still have to earn a commercial rate of return (set by their parent agency), pay FBT and WST (unless exemptions are available for reasons other than government ownership) and tax equivalent payments for remaining Commonwealth indirect taxes. However, other CN costs may be incurred on an (auditable) notional basis for example, payments of remaining Commonwealth direct taxes, States indirect taxes and debt neutrality charges.

Example

CN has been implemented into the baseline costing of Competitive Tendering Contracts activities throughout the Australian Federal Police. All these activities have been valued at under $10 million for the period under review and there have been no in-house bids. Furthermore, no CTC activities involved Commonwealth, State or local government bids.

2.3 Complaints Alleging Non Compliance with CN Principles

The Commonwealth Competitive Neutrality Complaints Office (CCNCO) 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 CN to Commonwealth Government activities. Contact details are provided below:

Commonwealth Competitive Neutrality Complaints Office
Locked Bag 3353
BELCONNEN ACT 2617
Telephone: (02) 6240 3377
Facsimile: (02) 6253 0049
Website: http://www.ccnco.gov.au

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

- a Commonwealth business activity has not been exposed to CN arrangements (including a commercial activity below the $10 million per annum turnover threshold;)[16]
- a Commonwealth business activity is not complying with CN arrangements that apply to it; or
- current CN arrangements are not effective in removing a Commonwealth business activity's net competitive advantage, which arises due to government ownership.

Where the CCNCO considers that CN 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 CCNCO may recommend appropriate remedial action or that the Treasurer undertakes a formal public inquiry into the matter.

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

2.3.1 Complaints Received in 1998-99

The CCNCO received six written complaints. Two complaints were in relation to the same matter and were investigated and reported on together. The remaining complaints, for a number of reasons, did not require formal investigation.

In September 1998, the CCNCO received two written complaints about the provision of Counter Terrorist First Response (CTFR) services by the Australian Protective Service (APS). The complainants contended that the supply of CTFR services does not qualify as a business for the purposes of CN because there are no actual or potential competitors to the APS for delivery of these services and airports cannot choose the level of service they purchase or the provider.

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16 This includes Commonwealth owned *Corporations Law* companies limited by guarantee, which are not otherwise subject to competitive neutrality requirements.

The CCNCO investigated the complaint and considered whether CN should apply to CTFR services and whether the appropriate level of charges had been applied. The CCNCO found that CN charges should continue to be applied to the APS's CTFR functions and so long as the APS continues to achieve a commercial rate of return (pre-tax) on its CTFR activity, its charges are sufficient to meet capital costs and, accordingly, there was no need to add further charges to meet interest and corporate tax obligations. The CCNCO also suggested that when the Commonwealth Treasury next reviews its publication, *Competitive Neutrality — Guidelines for Managers* and in its regular advice to agencies, it should seek to remove scope for misinterpretation about adjustments to agencies' prices for corporate tax and interest payments.

A number of CN complaints that were not formally investigated by the CCNCO.

A complaint by a Queensland company, which delivers unaddressed mail, regarding Australia Post's exemption from State and Territory traffic regulations which prevent motorcycles from riding on the footpath. The company could not obtain a similar exemption. The CCNCO did not conduct an investigation because it related to State traffic law over which the Commonwealth had no jurisdiction.

Ciptanet International alleged that universities it was competing against for AusAid funded projects were not complying with CN principles in pricing their bids. The CCNCO did not conduct an investigation because the head contractor appointed by AusAid to conduct the tender was not a Commonwealth Government business, and therefore was not within CCNCO's jurisdiction. The CCNCO did write to AusAid informing it that Commonwealth bidders for Commonwealth contracts are required to certify that their bid complies with CN and that this requirement is applicable to tenders let by head contractors appointed by AusAid as well as to tenders let directly by AusAid.

The owners of Canberra airport lodged a complaint regarding the pricing behaviour of Airservices Australia at Canberra airport. The airport owners alleged that the charges being levied on commercial users for Transport Navigation Services and Australian Rescue Fire Fighting Services were being set on an inappropriate basis, with the effect that commercial users were subsidising services provided for the

defence forces. The CCNCO did not conduct a full investigation because the major area of contention — the RAAF exemption from Transport Navigation Services and Australian Rescue Fire Fighting Services charges — was under review by Airservices Australia and the Department of Defence. However, Airservices Australia demonstrated that its charges to commercial users did not include the cost of services provided to the defence forces.

Dove Personnel, a job placement company, lodged a complaint about the operation of the Commonwealth Government's Job Network. Dove's concerns related to aspects of the Job Network tendering process conducted by the Department of Employment, Workplace Relations and Small Business, rather than the application of CN. Accordingly, the CCNCO advised Dove that there were no grounds to undertake a CN investigation.

2.4 Commonwealth Actions to Assist CN Implementation

2.4.1 Policy Measures

It is general Government policy not to issue a Commonwealth Government Guarantee on new borrowings. Where these are to be provided, the approval of the portfolio Minister, the Treasurer and the Prime Minister is required.

2.4.2 Publications

A handbook entitled *Commonwealth Competitive Neutrality Guidelines for Managers* was released in early 1998, to assist in the application of CN principles to the wide range of Commonwealth significant business activities. Copies of this handbook are available from the Commonwealth Department of the Treasury or the Treasury website.

The CCNCO 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 CN obligations. A second paper, *Rate of Return Issues*, was released in December 1998. This paper provides general advice on establishing a commercial rate of return on

assets target, particularly for small government business activities, and those factors the CCNCO will take into account when rate of return issues arise in a complaint. These publications are available from the CCNCO.

In March 1998, the Commonwealth Department of Finance and Administration released its handbook *Competitive Tendering and Contracting Guidance for Managers*, which explains the requirement for CN compliance. This publication is available from that Department.

3 Structural Reform of Public Monopolies

3.1 Commonwealth 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 Commonwealth 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 Commonwealth 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 undertaken by the public monopoly and the best means of funding and delivering any mandated community service obligations;
- 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 its government ownership. However, the new organisation must also be sufficiently flexible to be able to respond efficiently in a changing environment, particularly if it is to be privatised. 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 Commonwealth 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 1991* 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 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 Commonwealth'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 Australian Competition and Consumer Commission (ACCC) has 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.

During the past year there have been several legislative and regulatory reforms to enhance the development of sustainable competition in Australian telecommunications.

The *Telecommunications Legislation Amendment Act 1999* was assented to on 5 July 1999. The Act addresses anti-competitive conduct through several changes to the competition notice process and facilitates enhanced access to telecommunications services by expanding the ACCC's power in regards to information and disclosure and the arbitration of access disputes, including the giving of interim determinations.

In relation to anti-competitive conduct regulation (Part XIB), the *Telecommunications Legislation Amendment Act 1999*:

- ensures the effects test covers the combined effect of multiple instances of conduct;
- reduces the threshold for issuing a competition notice;
- simplifies the drafting and variation of competition notices;
- makes it harder for recipients to evade notices by slightly modifying their conduct;
- enables the ACCC to suggest alternative conduct;
- reduces incentives for appealing against notices; and
- creates a private right to injunctive action without a competition notice being issued.

In relation to access regulation (Part XIC), the *Telecommunications Legislation Amendment Act 1999*:

- enables combined declaration inquiries to be reported on separately;
- provides for ACCC disclosure of carrier data, including costs (under Part XIB);
- expands the ACCC's power to direct parties to negotiate in good faith;
- enables the ACCC to issue interim determinations (including for existing disputes);
- provides for the back-dating of final determinations;
- reduces incentives for appealing against determinations;
- ensures Commissioners cannot be disqualified from arbitrations; and
- ensures relevant obligations (for example, confidentiality) continue after an access dispute is withdrawn.

The Act also establishes a general market data reporting regime.

3.1.1.1 Declaration of the Local Loop

On 22 July 1999, the ACCC confirmed its draft decision of 14 December 1998 to declare local telecommunications services for the purposes of the Part XIC access regime. The declared services are:

- an unconditioned local service, which involves the use of unconditioned copper wires between a point on the customer's side of the local switch and the end-user's residence or business premises (this is referred to as 'A-side local access');
- local public switch telephone network (PSTN) originating and terminating services, which involve the carriage of communications between equipment at the end-user's premises and a point on the trunk side of the local switch (this is referred to as 'B-side local access'); and
- local carriage services (this is referred to as 'local call resale').

Amongst other things, A-side will facilitate competition in the supply of high capacity bandwidth services (for example, xDSL) on which e-commerce, education and entertainment will increasingly rely. B-side

access will facilitate interconnection at the local exchange level thus reducing interconnection costs, including for long distance calls. Local call resale will facilitate retail level competition, 'single billing' and provide a stepping stone for facilities-based local service competition.

Other significant developments in 1998-99 that will generate increased competition in the telecommunications industry are:

- the setting of the implementation date for local call rate and freephone number portability;
- the release of the ACCC's final decision on Telstra's PSTN undertaking;
- the introduction of fixed-to-mobile pre-selection;
- publication by the ACCC of its proposed accounting separation rules;
- the issue of the facilities access code;
- the issue by the ACCC of competition notices relating to commercial churn;
- the declaration of ISDN services;
- the amended declaration of digital data access services; and
- the declaration of most inter-capital transmission services.

The responsible Minister is required to initiate a review of Part XIB of the TPA by 1 July 2000. This review will provide an opportunity to consider the effectiveness of the accounting separation arrangements and other aspects of the regime.

3.1.2 Federal Airports Corporation

The Federal Airports Corporation (FAC) owned and operated most of Australia's major airports from 1988 until 1997, when privatisation of the airports through the sale of long term leases commenced.

Long-term leases for the first 3 of the 22 airports were signed in 1997, with the sale of leases for a further 14 airports completed by mid 1998. The remaining five airports (the Sydney Basin and Essendon Airports)

were leased to newly created Commonwealth owned companies in mid 1998. The FAC ceased operating in September 1998.

Some aspects of airport operations exhibit monopoly characteristics. In approaching privatisation, the Commonwealth put considerable effort into creating a regulatory framework that would maximise competition and protect consumer interests following privatisation.

3.1.2.1 Airport Industry Regulation

The FAC was self regulating in a large number of areas, including land use and environmental planning and control, commercial and retail trading and liquor licensing. As part of the sale process, the Parliament passed the *Airports Act 1996* that removed these responsibilities from airport lessees.

Provisions were also put in place relating to land use planning and the environment that require airport lessees to develop long term plans for the development and protection of the environment at the airport.

Commonwealth-appointed statutory office holders assess day to day compliance with Building Control and Environmental Protection Regulations at the airports. These requirements apply to all the leased airports (including Commonwealth owned airports), with the exception of the Mount Isa and Tennant Creek airports. These airports are subject to the relevant State and Territory planning laws.

In relation to control of on-airport activities, including commercial and retail trading and liquor licensing, the approach has been to subject airport lessees to State or Territory regulations. The aim is to place on-airport businesses in a competitively neutral regulatory position with respect to businesses operating off-airport. In some cases, it was necessary for the Commonwealth to make regulations on these matters in order to ease the transition to the new arrangements under privatisation. However, the Commonwealth is continuing to work with relevant State and Territory agencies so that airport specific regulations can be removed over time.

3.1.2.2 Introducing Competition to Airports

The framework established by the Government creates incentives for airport lessees to operate in a commercial manner, while still ensuring the public interest is protected. For example, responsibility for development of the airports rests entirely with lessees. The Master Planning provisions of the *Airports Act*, however, require lessees to publicly document their plans for future development of the airport — this ensures lessees are undertaking such planning and allows stakeholders and the community to provide input to these planning processes.

Through legislative and sales processes, the Government has put in place arrangements that will encourage competition between airports to the greatest extent possible. The *Airports Act* requires airlines not own more than 5 per cent of an airport operator company, and there are cross ownership restrictions of 15 per cent between the Sydney airports (Kingsford Smith and Sydney West) and Melbourne, Brisbane and Perth airports.

The *Airports Act* contains special provisions to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with Part IIIA of the *Trade Practices Act 1974*. These provisions are designed to promote competition between businesses on the airport.

An economic regulatory regime has also been established, administered by the ACCC, to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years. The 'X' factor reflects expected productivity improvements at each airport. The ACCC is responsible for determining the X values, which range from 1.0 to 5.5.

A second element is price monitoring of aeronautical-related services. Aeronautical-related services are services outside the price cap where operators could exert significant market power at individual airports. The ACCC's role is to monitor the prices of these services and take action where appropriate.

A potential effect of the price cap is that a business operator could lower prices in line with the cap but also reduce costs by allowing the infrastructure to deteriorate. Complementary to the prices oversight regime is a 'quality of service' monitoring regime. Quality of service monitoring is designed as a check against such an outcome. It is not designed to compare airports but to monitor individual airport performance over time.

3.1.3 Australian Wheat Board

On 1 July 1999, the former statutory Australian Wheat Board (AWB) was privatised as a grower owned and controlled company (AWB Limited) under Corporations Law, and Government underwriting of its borrowings ceased.

The levy on wheat sales to build up the Wheat Industry Fund (WIF) also ceased from that time, and the WIF was converted to B-class shares in AWB Ltd to form its capital base. A–class shares in AWB Ltd were also issued, but only to wheat growers, to provide for grower control of the company.

The only role for the Commonwealth Government with respect to wheat marketing from 1 July 1999 is to provide the wheat export monopoly under legislation. The former AWB's export control powers were transferred to a new statutory Wheat Export Authority (WEA), whose functions include monitoring and reporting on the use of the monopoly by the pooling subsidiary AWB (International) Ltd, which has been given an automatic right to export bulk wheat through the legislation. WEA is required to review AWB (International) Ltd's performance in using the monopoly before the end of 2004.

The *Wheat Marketing Act 1989*, as amended, will be reviewed as part the National Competition Policy Legislation Review Program in 1999-2000. It is intended that this review will also examine matters in clause 4 of the *Competition Principles Agreement* regarding relocation of regulatory functions away from a public monopoly when introducing competition into the market. Consistent with these principles, establishing the WEA as a separate export control body, with an independent board, provides for the separation of regulatory and commercial functions.

4 Access to Essential Infrastructure

4.1 The Importance of Access to Infrastructure

Fair and reasonable access by 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, 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.

For example, as part of a package of reforms announced by the Government in July 1998 in response to the NCC report on the Australian Postal Corporation legislation, the Government is intending to introduce an access regime which will provide competitors with access to Australia Post's network. The details of the access regime are being developed in consultation with relevant organisations. It is intended that the regime be effective from 1 July 2000.

Part 3 of the *National Transmission Network Sale Act 1998* applies an access regime, based on Part XIC of the *Trade Practices Act 1974*, to transmission services supplied, or the provision of access to sites and towers, by NTL Australia Pty Ltd (as a national transmission company) or its declared successor, in favour of certain nominated customers (including the Australian Broadcasting Corporation, the Special Broadcasting Services and the Radio for the Print Handicapped).

4.2 Part IIIA of the Trade Practices Act 1974

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

- it would not be economically feasible to duplicate the facility;
- access to the service is necessary in order to permit effective competition in a downstream or upstream market;
- 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; and
- the safe use of the facility by the person seeking access can be ensured at an economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

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 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 Commonwealth 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 the 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 is able to 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 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 decision on an application for declaration can be appealed to the Australian Competition Tribunal (ACT) within 21 days.
- through an undertaking to the ACCC; and
  - 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.
- 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 Commonwealth Minister on whether or not to certify the regime. In making this decision, the Minister must consider the NCC's recommendation and apply the relevant principles set out in the CPA.
- Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared.
- A decision on an application for certification can be appealed to the ACT within 21 days.

Specific access regimes have also been established for particular infrastructure facilities, including those applying to telecommunications carriers, airport services provided at core regulated Commonwealth airports and for natural gas transmission and distribution pipelines. These regimes may or may not interact with the national access regime.

4.3 Commonwealth Activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Commonwealth jurisdiction or requiring a decision by a Commonwealth Minister within the reporting period.

4.3.1 Airport Services

Section 192 of the *Airports Act 1996* contains an access regime applying to airport services at core regulated (major) privatised Commonwealth airports.

Airport service means a service provided at a core regulated airport, where the service:

- is necessary for the purposes of operating and/or maintaining civil aviation services at the airport; and
- is provided by means of significant facilities at the airport, being facilities that cannot be economically duplicated.

Where an airport lessee does not have an access undertaking for airport services approved by the ACCC within 12 months of privatisation, the Commonwealth Minister for Transport and Regional Services is required to make a determination that each airport service not covered by an access undertaking is a declared service for the purposes of Part IIIA of the TPA. Section 192 allows the ACCC to make a determination to extend the period in which an access undertaking can be made by no longer than a further 12 months.

The three Phase I airports (Brisbane, Melbourne and Perth) were declared under this provision on 23 July 1998. No Phase II core regulated airport lodged an access undertaking with the ACCC within the designated period. However, the operator of Townsville airport was granted a 12 month extension by the ACCC in time to lodge an undertaking. The other Phase II core regulated airports (Adelaide, Alice Springs, Canberra, Coolangatta, Darwin, Hobart, Launceston) were declared under this provision on 25 October 1999.

4.3.2 Application for Access Declaration at Sydney and Melbourne Airports by Australian Cargo Terminal Operators

On 30 June 1997, the Commonwealth Treasurer declared certain freight handling services provided by the Federal Airports Commission (FAC) at the Sydney International Airport. This was in response to an application made through the NCC by the Australian Cargo Terminal Operators Pty Ltd.

On 21 July 1997, the FAC applied for a review of this declaration. The matter is currently under consideration by the Australian Competition Tribunal.

4.3.3 South Australian Access Regime for Gas Pipeline Services

In November 1997, the Council of Australian Governments (COAG) endorsed a national regulatory regime for natural gas transmission and distribution pipelines. The national regime establishes a framework for third parties, such as gas retailers and end-users, to negotiate access to

transmission and distribution gas pipelines on fair and reasonable terms and conditions. By removing supply bottlenecks in the industry, it aims to increase competition in the supply and sale of natural gas.

As part of the agreement, States and Territories agreed to submit a regime consistent with the national regime, as it is applied in their jurisdiction, through the NCC for certification under Part IIIA of the TPA.

On June 22 1998, the NCC received an application from the South Australian Government for certification of the South Australian regime. The NCC provided the Treasurer with its recommendation on 23 September 1998, supporting the application.

Having considered the recommendation, the Minister for Financial Services and Regulation certified the *South Australian Third Party Access Regime for Natural Gas Pipelines* as an effective access regime for a period of 15 years commencing on 8 December 1998.

4.3.4 New South Wales Access Regime for Natural Gas Pipelines

On 27 October 1998 the New South Wales Government submitted the *New South Wales Third Party Access Regime for Natural Gas Pipelines* to the NCC for certification under Part IIIA of the TPA. The NCC recommended on 30 March 1999 that the Minister for Financial Services and Regulation certify the regime.

Following the High Court decision on cross-vesting in *Re Wakim; ex parte McNally*, on 11 August 1999 the Minister for Financial Services and Regulation advised the New South Wales Premier that a decision on certification of the New South Wales regime would be delayed pending changes to jurisdictions' gas pipelines access legislation.

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 or natural monopoly, or where the necessary conditions for effective competition are not otherwise met.

The Commonwealth has had its current prices oversight arrangements for public and private sector business activities under Commonwealth jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. National Competition Policy 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, with the exception of Western Australia and the Northern Territory, 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 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 good or services (or both);
- it should permit submissions by interested persons; and
- its pricing recommendations, and the reasons for them, should be published.

5.2 Commonwealth Prices Oversight

The Commonwealth 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 ACCC, an independent Commonwealth authority, is responsible for administering the *Prices Surveillance Act 1983.*

The *Prices Surveillance Act* enables the ACCC to undertake price surveillance, price inquiries or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Commonwealth, 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 Commonwealth 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 is currently applied to aeronautical services at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route navigation and rescue and firefighting services and various Australia Post charges.

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 Commonwealth

Minister. During the period of the inquiry, the price under examination may not be increased 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 Commonwealth Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, the ACCC is currently required to undertake prices monitoring of all aeronautically related charges, and collect price, cost and profit data for container terminal operator companies in Australia's major ports. The findings of the exercise are then reported back to the Minister.

The ACCC also has special pricing powers in relation to specific infrastructure facilities, for example, aeronautical services at privatised core regulated airports (*see* page 225). (3.1.2.2 Introducing Competition to Airports).

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 Commonwealth, 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 (NCC), and the NCC has decided that the condition in point (a) exists and that the pricing of the GBE has a significant direct or indirect impact on constitutional trade or commerce;

- the NCC then has recommended that the responsible Commonwealth Minister declare the GBE for prices surveillance by the ACCC; and
- the responsible Commonwealth Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements for the period 1998-99.

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 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.

Subsection 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, as long as the State or Territory is a party to the CCA and the *Competition Principles Agreement*.

The exemption provisions in subsections 51(2) and 51(3) were subject to a legislation review under the CPA (*see* page 57).

6.2 Commonwealth exceptions under s.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.

6.2.1 Existing Legislation Reliant on s.51(1)

The following legislation containing exception provisions has been previously identified:

- the *Australian Postal Corporation Act 1989* (subsection 33A(6A));
- the *Wheat Marketing Legislation Amendment Act 1998*; and

- the *Trade Practices Amendment (Country of Origin Representations) Act 1998*.

6.2.2 New Legislation: Exceptions made in 1998-99

There was only one notification of Commonwealth legislation made in reliance of section 51(1) in 1998-99.

Section 17 of the *Year 2000 Information Disclosure Act 1999* excepts contracts and arrangements from the application of section 45 of the *Trade Practices Act 1974*, to the extent that these relate to the disclosure and/or exchange of specific information associated with the prevention, detection or remediation of problems relating to Year 2000 processing.

Section 45 of the *Trade Practices Act 1974* prohibits certain anti-competitive contracts, arrangements or understandings that are likely to have the effect of substantially lessening competition.

Representations to Government suggested that the exchange of information about Year 2000 computer problems and remediation efforts between competitors in an industry might be inhibited because of the risk of liability under section 45.

The exception removes a potential barrier to the exchange of information on Year 2000 preparedness between companies. By facilitating information flows, the exemption is aimed at reducing the costs of contingency planning for business and enabling business to share information on approaches to Year 2000 problems, reducing the risk of business failures from Year 2000 issues.

The Year 2000 Information Disclosure Act has a sunset of 30 June 2001.

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 included in the ***Agreement to Implement the National Competition Policy and Related Reforms***, as a condition for receipt of National Competition Policy (NCP) payments.

While these commitments are largely the responsibility of the States and Territories, the Commonwealth does have some specific responsibilities (particularly in the area of gas reform). It 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 Commonwealth.

7.1 Electricity

In July 1991, COAG agreed to develop a competitive electricity market in southern and eastern Australia. The Commonwealth has since taken a leadership role in this area to ensure implementation of electricity reforms on a national basis.

Following the application of the first stage of the National Electricity Market (NEM) in May 1997, and the effective piloting from January 1998 of the NEM systems in Queensland, the NEM became fully operational in New South Wales, Victoria, South Australia and the Australian Capital Territory on 12 December 1998. The same system was concurrently implemented in Queensland.

The NEM, which involves a competitive wholesale market structured around a common pool or spot market for trading wholesale electricity, has worked effectively with only minor operational problems. Market participants have been generally pleased with the new market systems.

The Commonwealth has continued work with participating jurisdictions, the National Electricity Market Management Company (NEMMCO), which manages the operations of the wholesale electricity market and security of the power system, and the National Electricity Code Administrator (NECA), which administers the national electricity code, including compliance, enforcement and dispute resolution processes.

It also participates in working groups concerned with the policy and operational environment for the NEM, ongoing development, review and implementation of improvements to the market governance arrangements, and the achievement of a fully competitive national electricity market.

7.2 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 marketplace.

In February 1994, COAG agreed to facilitate developments aimed at stimulating competition, thereby achieving 'free and fair trade' in the natural gas sector. These commitments were integrated into the 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 (GRIG) 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 Commonwealth, 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.

7.2.1 Implementation of the Gas Access Code

The *Gas Pipelines Access (Commonwealth) Act 1998* was passed by Parliament on 9 July 1998. This Act gives effect to the Commonwealth's role in implementing the national third party access regime for natural gas pipelines (the national access regime) in fulfillment of the COAG commitment to 'free and fair' trade in natural gas. It also accords with the Commonwealth's obligations under the *Natural Gas Pipelines Access Agreement*, signed by Heads of Government at the COAG meeting of 7 November 1997, to enact legislation to facilitate the national character of the scheme.

The Act ensures that the national regime applies to offshore waters, to relevant external territories and adjacent areas, Commonwealth territory and to the Moomba-Sydney pipeline, which was previously regulated by a separate Commonwealth Act. It also facilitates the use by States and Territories of the national competition bodies, the National Competition

Council and the Australian Competition and Consumer Commission (ACCC), ensuring a greater national consistency of outcomes.

Significant progress was made on reform in the upstream (or producer) sector to complement the gas pipeline access reforms. The Upstream Issues Working Group (UIWG) completed its review of issues in the upstream sector impacting on the growth, diversity and level of competition in gas consuming markets. The UIWG incorporates government officials, industry (including gas producers, pipeliners and users), the ACCC and the NCC. The review of upstream competition is consistent with the Government's policy commitment to accelerate the reform of energy markets.

The UIWG submitted its report to energy Ministers and the Prime Minister on 30 December 1998. The key recommendations relate to the need for greater transparency and predictability in the onshore acreage award processes, that the existing authorisation provisions of the *Trade Practices Act 1974* be maintained as the appropriate mechanism for regulating the joint marketing activities and contractual arrangements of gas joint ventures, and for the industry, in cooperation with jurisdictions, to develop a set of best practice principles for access to upstream facilities. In March 1999, all energy Ministers, except the Northern Territory Minister, endorsed the report's recommendations. The Northern Territory Minister only endorsed the recommendations relating to acreage management.

The acreage management recommendations are largely being addressed, with a number of jurisdictions presently undertaking, or soon to commence, reviews of their petroleum legislation. Development of best practice principles for access to upstream gas facilities is intended to overcome negative perceptions about the ability of third parties to negotiate access to upstream gas facilities and to encourage the entry of new players into the upstream gas sector. The industry, through the Australian Petroleum Producers and Explorers Association (APPEA), developed principles for the commercial negotiation of third party access to upstream gas facilities. As the industry principles were not the 'best practice' principles that most jurisdictions and other sectors of the industry had hoped for, the principles were noted but not endorsed by ANZMEC Ministers in August 1999. ANZMEC Ministers also agreed to the cessation of the UIWG.

GRIG also undertook to identify key issues affecting the development of competition in the retail sector. In resolving impediments to retail contestability, jurisdictions and industry are seeking to achieve consistent approaches across jurisdictions.

7.3 Water

Water reform is a vital national priority that has implications for the future wellbeing of all Australians. Water is critical to many economic activities and its management is inextricably linked to the protection of water quality and environmental processes.

Australia's water reform initiatives have been formulated against a background of considerable concern about the state of the nation's water resources and a recognition that an important part of the solution lay in significant policy and institutional change.

Governments started to address these problems in the 1980s. The COAG water reform framework followed, with an agreement amongst jurisdictions in February 1994. The COAG framework provides new strategic focus to reform through an integrated package of measures and national commitment to their implementation.

A feature of the package is that it explicitly links economic and environmental objectives. It seeks to improve both the efficiency of water use and the environmental management of the nation's river systems.

The package's main elements include a range of interlinked market based measures involving pricing water for full cost recovery, establishing secure access to water separate from land and providing for permanent trading in water entitlements. It also includes specific provision for water for the environment, water service providers to operate on the basis of commercial principles, improved institutional arrangements and public consultation and education.

The water industry reforms were drawn more closely into the micro-economic reform process in April 1995, when COAG linked jurisdiction implementation of the water reforms to the National

Competition Policy (NCP) and associated second and third tranche NCP payments.

The *Agreement to Implement the National Competition Policy and Related Reforms* establishes as a second tranche commitment for competition payments the implementation of a strategic framework for the efficient and sustainable reform of the Australian water industry (and the future processes) as endorsed at the February 1994 COAG meeting and embodied in the *Report of the Expert Group on Asset Valuation Methods and Cost Recovery Definitions* (February 1995). The continued effective observance of water reforms is a third tranche commitment.

7.3.1 Progress Implementing the Water Reform Framework

While much of the responsibility for implementing the COAG framework rests with individual jurisdictions, in late 1998, the Agriculture and Resource Management Council of Australia and New Zealand established a High Level Steering Group to maintain reform impetus. It is chaired by the Commonwealth Department of Agriculture Fisheries and Forestry, and comprises Chief Executive Officers of several State Departments and a representative from Water Services Association of Australia. It also identifies issues of concern across jurisdictions and sets up time-limited working groups to address those matters.

In April 1999, the Prime Minister wrote to Heads of Government seeking their endorsement of the *Report on Outcomes of the Tripartite Meeting on the Implementation of the Requirements of the COAG Water Reform Framework,* prepared jointly by the COAG Committee on Regulatory Reform, the National Competition Council (NCC) and the High Level Steering Group on Water. States and Territories have subsequently indicated their support for the report.

The report clarifies the extent to which a 1996 ARMCANZ report on groundwater is to be considered by the NCC in competition payment assessment processes, in particular, against the pricing clauses of the 1994 Framework Agreement.

It also recommends that jurisdictions be required to submit individual implementation programs, outlining a priority list of river systems and

groundwater resources, and detailing implementation actions and dates for allocations and trading, to the NCC for agreement and to COAG Senior Officials for endorsement.

For third tranche assessment, from 1 July 2001, States and Territories will have to demonstrate substantial progress in implementing their agreed and endorsed implementation programs.

These changes will delay the timetable for implementation of environmental allocations and water trading reforms from 1998 to July 2001, in recognition of the complexity of the implementation task. However, the trade—off is more rigorous specification of commitments and implementation paths.

7.4 Road Transport

In 1991, Heads of Government signed the Heavy Vehicles Agreement (HVA), directed at vehicles over 4.5 tonnes gross vehicle mass. The Agreement was intended to improve road safety and transport efficiency and reduce compliance and administration costs. It involved introducing uniform national arrangements for vehicle roadworthiness and driver licensing, and vehicle charges.

The Commonwealth *National Road Transport Commission Act 1991* gave effect to the HVA and created the National Road Transport Commission (NRTC) to oversee development and implementation of the reform program. The Act also established the inter-jurisdictional Ministerial Council of Road Transport (MCRT) to manage implementation of the specific reforms developed by the NRTC.

In May 1992, the Light Vehicles Agreement (LVA) was signed. This extended the objective of national uniformity in road regulation to all other road users. The Commonwealth amended the NRTC Act to give effect to this agreement.

The NRTC has been developing 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.

It was initially determined that governments would phase in the six reform modules using 'template' legislation. This involved the Commonwealth enacting legislation (Commonwealth Road Transport Legislation) to apply the agreed reforms in the ACT, with the other states and territories applying the Commonwealth template 'by reference' in their own jurisdictions. However, in February 1997, MCRT agreed that, in certain circumstances, jurisdictions could implement approved reforms without waiting for the Commonwealth template. This was intended to improve the timeliness and reduce the resource burden of reform implementation.

Following inter-jurisdictional consultation, on 25 June 1998, the Commonwealth passed the *National Road Transport Commission Amendment Act 1998*. This Act provides for the:

- insertion of the First Heavy and Light Vehicles Amending Agreements — amongst other things these preserve the concept of Commonwealth Road Transport Legislation but allow jurisdictions the flexibility to implement the legislation either by reference or by enacting its substance;
- the Australian Transport Council (ATC) to exercise the powers and functions previously held by the MRCT; and
- the New Zealand member of ATC to vote on matters concerning the development of a road vehicle cooperation program between Australia and New Zealand, including the development of trans-Tasman Mutual Recognition Arrangement road vehicle standards that will facilitate free trade in vehicles between the two countries.

The Amending Agreements were ratified in September 1999.

In April 1995, the road transport reforms were integrated into the NCP process — in recognition that full implementation of the HVA and LVA would boost national welfare and reduce the cost of road transport services. This involved all governments committing to the effective observance of road transport reforms by 1999, and to have fully implemented and continued observance of the reforms by no later than 2001.

Following a request from the COAG Committee on Regulatory Reform, a Standing Committee on Transport working group, chaired by the Commonwealth, developed an assessment framework, encompassing 19 reforms with implementation criteria and jurisdiction implementation target dates. The framework was agreed by ATC in December 1998 and endorsed by COAG in May 1999. The framework was then provided to the NCC and served as the basis for its second tranche assessment of road transport reform.

In 1998-99, the Commonwealth implemented the following road transport reforms for heavy vehicles registered under the Federal Interstate Registration Scheme (FIRS):

- speeding heavy vehicle policy;
- severe risk overloading penalties;
- higher mass limits for tandem and triaxial vehicles;
- exemption from annual inspections for eligible vehicles;
- gazettal of routes for B — doubles; and
- options for three and six month registration.

A similar framework is expected to be developed to facilitate third tranche NCP assessments in 2001.

Commonwealth Legislation Review Schedule (as at 30 June 1998) — 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, Science and Resources
Bounty (Fuel Ethanol) Act 1994	Industry, Science and Resources
Bounty (Machine Tools & Robots) Act 1985	Industry, Science and Resources
Census & Statistics Act 1905	Treasury
Commerce (Imports) Regulations and Customs Prohibited Imports Regulations	Industry, Science and Resources
Corporations Act 1989	Treasury
Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991	Education, Training and Youth Affairs
Financial system — comprehensive review of the regulatory framework	Treasury
Industrial Relations Act 1988	Employment, Workplace Relations and Small Business
Patents Act 1990, sections 198-202 (Patent Attorney registration)	Industry, Science and Resources
Protection of Movable Cultural Heritage Act 1986	Communications, Information Technology and the Arts
Quarantine Act 1908	Agriculture, Fisheries and Forestry
1996-97	
Aboriginal Land Rights (Northern Territory) Act 1976	Prime Minister and Cabinet
Australian Maritime Safety Authority Act 1990	Transport and Regional Services
Australian Postal Corporation Act 1989	Communications, Information Technology and the Arts

Name of legislation	Responsible department
Bills of Exchange Act 1909	Treasury
Customs Tariff Act 1995 — Automotive Industry Arrangements	Attorney-General's
Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements	Attorney-General's
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
Employment Services Act 1994 (case management issues)	Employment, Workplace Relations and Small Business
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 Air Service Agreements	Transport and Regional Services
International Arbitration Act 1974	Attorney-General's
Migration Act 1958 — sub-classes 120 and 121 (business visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 676 and 686 (tourist visas)	Immigration and Multicultural Affairs
Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations	Immigration and Multicultural Affairs
Migration Agents Registration (Application) Levy Act 1992 and *Migration Agents Registration (Renewal) Levy Act 1992*	Immigration and Multicultural 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, Science and Resources
Quarantine Act 1908, in relation to human quarantine	Health and Aged Care
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

Name of legislation	Responsible department
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, Workplace Relations and Small Business
1997-98	
Affirmative Action (Equal Employment Opportunity for Women) Act 1986	Employment, Workplace Relations and Small Business
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 Aged Care
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, Training and Youth Affairs
Imported Food Control Act 1992 and regulations	Agriculture, Fisheries and Forestry
International Air Services Commission Act 1992	Transport and Regional Services
Motor Vehicle Standards Act 1989	Transport and Regional Services
Mutual Recognition Act 1992	Education, Training and Youth Affairs and Industry, Science and Resources
National Health Act 1953 (Part 6 & Schedule 1) and *Health Insurance Act 1973* (Part 3)	Health and Aged Care
National Residue Survey Administration Act 1992 and related Acts	Agriculture, Fisheries and Forestry
Petroleum Retail Marketing Franchise Act 1980	Industry, Science and Resources
Petroleum Retail Marketing Sites Act 1980	Industry, Science 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

Name of legislation	Responsible department
Proceeds of Crime Act 1987 and regulations	Attorney General's
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 Authority Act 1988, 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 Aged Care
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
Dairy Industry Legislation	Agriculture, Fisheries and Forestry
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 Aged Care
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, Science and Resources
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
Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts

Name of legislation	Responsible department
Superannuation Acts including: *Occupational Superannuation Standards Regulations Application Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993, Superannuation Entities (Taxation) Act 1987, Superannuation Industry (Supervision) Act 1993, Superannuation (Resolution of Complaints) Act 1993* and the *Superannuation Supervisory Levy Act 1991*	Treasury
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	
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
Home & Community Care Act 1985	Health and Aged Care
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, Science and Resources
Prices Surveillance Act 1983	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

Commonwealth Business Activities Subject to CN (as at 30 June 1999) — progress implementing competitive neutrality

Table B1: Government Business Enterprises

Name	Progress
Australian Defence Industries Limited	Sold in August 1999.
Australian Government Solicitor	Established as a GBE in September 1999; CN compliant.
Australian Industry Development Corporation	Australian Investment Development Corporation Limited, a commercial subsidiary of AIDC, was sold on 3 February 1998. There are no residual CN requirements.
Australian National Line Limited	Business activities sold during 1998-99.
Australian National Railways Commission	Business and assets sold and transferred in 1997-98, Commission to be wound up in 2000.
Australian Postal Corporation	CN implemented. NCC review. CN recommendations being considered.
Australian Rail Track Corporation	CN compliant.
Australian Technology Group Limited	Partially privatised, Commonwealth equity holding under review.
Comland	Not trading in 1998-99.
Defence Housing Authority	CN implementation under consideration.
Employment National Limited, Employment National (Administration) Limited[17]	CN compliant, post tax rate of return target established.
Essendon Airport Limited	CN compliant.
Health Services Australia Limited	CN compliant.
Medibank Private Limited	Established as a GBE on 1 May 1998, CN compliant.
Snowy Mountains Hydro-electric Authority	Corporatisation pending. CN implementation agreements under negotiation.
Sydney Airports Corporation Limited	CN compliant.
Telstra Corporation Limited	Partially privatised, CN compliant.

17 Employment National and its subsidiary are non-Government Business Enterprises *Corporations Law* companies.

Table B2: Commonwealth Business Units

Name	Progress
Artbank	No major CN issues.
Australian Government Analytical Laboratory	CN compliant.
Australian Protective Service	CN compliant.
Australian Surveying and Land Information Group	CN compliant.
Australian Valuation Office	CN compliant.
Royal Australian Mint	CN compliant.

Table B3: Commercial Business Activities

Name	Progress
Aged Care Standards and Accreditation Agency	CN compliant.
Airservices Australia	No major CN issues.
Albury Wodonga Development Corporation (commercial services)	CN not implemented, Corporation being wound down.
Army and Air Force Canteen Service (retailing services)	No major CN issues.
Australian Broadcasting Corporation (consumer goods, studio rentals)	CN under implementation.
Australian Hearing Services	CN under implementation.
Australian National University (some teaching and consulting services)	CN under implementation.
Commonwealth Scientific and Industrial Research Organisation (research, technical and consulting services)	CN compliant.
Export Finance and Insurance Corporation	CN under implementation.
National Rail Corporation	CN compliant, sale pending.
Reserve Bank of Australia (financial services)	CN compliant.
Special Broadcasting Service (consumer goods)	CN compliant.