Commonwealth National Competition Policy

Annual Report

2000-01

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Abbreviations

ABARE	Australian Bureau of Agricultural and Resource Economics
ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
ADC	Australian Dairy Corporation
ADFB	Australian Dried Fruits Board
AFFA	Department of Agriculture, Fisheries and Forestry Australia
AGAL	Australian Government Analytical Laboratories
AHMAC	Australian Health Ministers' Advisory Council
AHMC	Australian Health Ministers' Conference
AISSS	AIS Swim School (now AIS Swim and Fitness)
AMSA	Australian Maritime Safety Authority
ANTA	Australian National Training Authority
ANZECC	Australian and New Zealand Environment and Conservation Council
ANZFA	Australia New Zealand Food Authority (now Food Standards Australia New Zealand)
ANZMEC	Australian and New Zealand Minerals and Energy Council
AQIS	Australian Quarantine and Inspection Service
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
ARRB	ARRB Transport Research Limited
ATC	Australian Transport Council
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWBI	AWB (International) Limited

CAL	Camden Airport Limited
CAPEC	Conference of Asia Pacific Express Couriers
CASA	Civil Aviation Safety Authority
CCA	*Conduct Code Agreement*
CCNCO	Commonwealth Competitive Neutrality Complaints Office
CLRS	Commonwealth Legislation Review Schedule
CNPS	*Commonwealth Competitive Neutrality Policy Statement* (June 1996)
COAG	Council of Australian Governments
CPA	*Competition Principles Agreement*
CSO	Community Service Obligation
CTC	Competitive Tendering and Contracting
DHA	Defence Housing Authority
DOTARS	Department of Transport and Regional Services
DOCITA	Department of Communications, Information Technology and the Arts
EAL	Essendon Airport Limited
EFIC	Export Finance and Insurance Corporation
FBT	Fringe Benefits Tax
FIRS	Federal Interstate Registration Scheme
GATS	General Agreement on Trade in Services
GBE	Government Business Enterprise
GDP	Gross Domestic Product
GRIG	Gas Reform Implementation Group
GST	Goods and Services Tax
HACC	Home and Community Care
HAL	Horticulture Australia Limited
HECS	Higher Education Contributions Scheme

HIASC	Horticultural Industry Alliance Steering Committee
HRDC	Horticulture Research and Development Corporation
IDC	Interdepartmental Committee
Implementation Agreement	*Agreement to Implement the National Competition Policy and Related Reforms*
IPART	Independent Pricing and Regulatory Tribunal (NSW)
KPFC	Kippax Pool and Fitness Centre
LSAA	Legal Services Association Australia
LVS	Low Volume Scheme
MRA	Mutual Recognition Agreement
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NGPAC	National Gas Pipelines Advisory Committee
NRA	National Registration Authority for Agricultural and Veterinary Chemicals
NRC	National Rail Corporation
NRS	National Residue Survey
NRTC	National Road Transport Commission
ODS	ozone depleting substances
OffGAR	Office of Gas Access Regulation (WA)
ORR	Office of Regulation Review
PBS	Pharmaceutical Benefits Scheme
PELS	Postgraduate Education Loans Scheme

PIMC	Primary Industries Ministerial Council
PISC	Primary Industries Standing Committee
PSA	*Prices Surveillance Act 1983*
RAWS	Registered Automotive Workshop Scheme
RFA	Regional Forest Agreement
RIS	Regulation Impact Statement
SACL	Sydney Airport Corporation Limited
SCARM	Standing Committee on Agriculture and Resource Management
SEVS	Specialist and Enthusiast Vehicle Scheme
SWG	Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group
TAFE	Technical and Further Education
TPA	*Trade Practices Act 1974*
USO	Universal Service Obligation
WEA	Wheat Export Authority
WTO	World Trade Organisation

Introduction

The significance of Competition Policy for Australia

Australia's economic performance over the past decade has been described as remarkable. We have experienced an economic expansion which has been longer and steadier than any since the 1960s with significant inroads into unemployment and consistently low inflation. Furthermore, Australia's performance has outstripped that of most of our peers. The 1990s were the only postwar decade in which growth in Australian Gross Domestic Product (GDP) per capita exceeded the OECD average.

A significant reason for this has been the surge in productivity growth since the mid-1990s. Multifactor productivity increased by an average of 1.8 per cent per year from 1993-94 to 1999-00 compared with an average of 0.7 per cent from 1981-82 to 1993-94. These gains emerged from the development and adoption of new technology and innovations, better organisation of production within firms, more efficient resource allocation across industries and improved international competitiveness. Over the long term, Australia's economic growth and export competitiveness depend on its productivity performance.

Before the structural reforms of the 1980s and 1990s, Australia's economy did not have the flexibility and incentives to adjust to changes in the domestic and international environment. It needed less rigid economic structures to take advantage of emerging opportunities by facilitating the movement of resources (product, labour and capital) between and within industries.

Competition reforms have contributed to this performance. Reform involves continuing efforts to reduce barriers to market entry and exit, improving anti-competitive regulations and exposing government owned businesses to market forces in a competitively neutral manner. Competition provides incentives that promote productivity growth and address excessive investment, poor service delivery and inefficient pricing.

National Competition Policy (NCP) reforms continue to benefit the economy, with the Productivity Commission estimating they have the potential to increase GDP by 2.5 per cent above what would occur in the absence of such reforms.[1] Recent ABARE estimates suggest that the total benefits of reform in electricity alone will deliver around $16 billion of benefits between 1995 and 2010, of which over 60 per cent — or about $9 billion — have already been delivered.[2]

Competition reforms have helped Australia adapt more readily to the internationalisation of our economy. Lower domestic production costs arising from NCP reforms enhance Australia's export competitiveness, with the Productivity Commission estimating export volumes 3.4 per cent higher than what could otherwise be achieved.[3]

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.

Competition reform also offers 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.

In seeking productivity gains, competition 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 all play an important role in productivity growth.

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1 Productivity Commission 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia*, Report No 8, AusInfo, Canberra, p. 298.

2 Short, C., Swan, A., Graham, B. and Mackay-Smith, W. 2001, Electricity reform: The benefits and costs of Australia, in *Outlook 2001*, Proceedings of the National Outlook Conference, vol. 3, *Minerals and Energy*, ABARE, Canberra.

3 Productivity Commission 1999, *Impact of Competition Policy Reforms on Rural and Regional Australia*, Report No 8, AusInfo, Canberra, p. 299.

Sustained productivity growth is essential to the continued improvement in Australia's living standards. The Productivity Commission states that microeconomic reform assists dynamic gains in productivity now and in the future by helping to change the business environment in the public and private sectors, making the return to the slow growth rates of previous decades unlikely.[4] Thus, competition policy is yielding ongoing benefits for Australia.

National Competition Policy framework

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

The commitments embodied in these agreements effectively underpin National Competition Policy in Australia.[5] 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* (TPA) and the *Prices Surveillance Act 1983* (PSA).

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

- the review and, where 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);

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4 Productivity Commission 1999, *Microeconomic Reforms and Australian Productivity: Exploring the Links*, Commission Research Paper, AusInfo, Canberra, pp. 133-4.

5 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 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);

- 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 competition laws across all jurisdictions (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (ACCC) (Chapter 6); and

- 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 seven years since the commencement of NCP. The benefits to the community from this process are becoming more 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.

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 National Competition Policy?

National Competition Policy 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 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, NCP does not:

- mandate the privatisation of government businesses;
- force competitive tendering and 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.

Public interest test

NCP, microeconomic reform and globalisation have been claimed to result in adverse social outcomes.[6]

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* 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. These factors are broader than the economic benefits and costs of a proposed reform (see Box 3 on page 15).[7]

Further, the Council of Australian Governments (COAG) at its 3 November 2000 meeting[8] agreed, *inter alia*, to enhancements to the public interest test.

COAG agreed that in meeting the requirements of the public interest test governments should document the public interest reasons supporting a decision or assessment and make them available to interested parties and the public. When examining those matters identified under the public interest test, governments should give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

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

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

7 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.

8 See the *Commonwealth National Competition Policy Annual Report 1999-2000* (page 11) for further details.

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 (CSOs).

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 reforms 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 CPA, the Commonwealth is required to publish an annual report outlining its progress towards:

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition (as outlined in the Commonwealth Legislation Review Schedule (CLRS)),[9]
- implementing competitive neutrality principles (including allegations of non-compliance).

However, to recognise fully the range of Commonwealth commitments established by the NCP Agreements, all areas of Commonwealth involvement have been reported.[10]

This report formally covers the period 1 July 2000 to 30 June 2001, although, where available, more recent information is provided in certain cases.

National Competition Policy payments

Under the Implementation Agreement, the Commonwealth agreed to make competition payments to those States and Territories assessed as making satisfactory progress towards 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 (between 1997-98 and 2005-06).

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9 In November 2000, COAG agreed to extend the deadline for this commitment from the end of the year 2000 to 30 June 2002.

10 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.

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 ceased on 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 commenced in 1999-2000, and involved a maximum annual payment of $400 million (in 1994-95 prices).
- The third tranche of the competition payments commenced 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 competition 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.

For the period 2000-01 all States and Territories, with the exception of Queensland and the Northern Territory, received their full allocation of payments.

In relation to Queensland, the Commonwealth accepted the Council's recommendations and suspended ten per cent in relation to its failure to put in place an adequate CSO framework to address competitive neutrality concerns arising from the operation of Queensland Rail, and a further five per cent in relation to insufficient progress in implementing two part tariffs for urban water charges. These suspensions amounted to approximately $12.9 million of approximately $85.9 million.

The Northern Territory had five per cent of its NCP payments suspended in relation to its failure to introduce the national driver demerits point

scheme. This suspension amounts to approximately $235,614 of the Northern Territory's maximum NCP payment for 2000-01 of approximately $4.7 million.

The Council's February and June 2001 supplementary assessments recommended that the penalties be lifted and reimbursed.

The recommendation to lift the Northern Territory suspension followed the Australian Transport Council (ATC) exempting the Northern Territory from this element of the road reform package.

The lifting of the two penalties imposed on Queensland's competition payments follows an undertaking by the Queensland Government to release publicly the CSO framework for public transport in South East Queensland, and commitments provided by Townsville and Cooloola Councils to bring forward appraisal of the cost effectiveness of two-part tariff arrangements to June 2001.

For the period 2001-02 all States and Territories received their full allocation of payments, with the exception of Queensland.

The Commonwealth permanently deducted $270,000 from Queensland's 2001-02 competition payments because of Townsville City Council's failure to objectively analyse the cost effectiveness of two-part tariffs in relation to water reform.

The $270,000 is approximately the amount that Townsville City Council would receive for successful completion of water reform from the Queensland Government's financial incentives scheme for local authorities.

The NCC first raised this matter in the June 1999 second tranche assessment.

New South Wales faced further assessment in January 2002, in relation to implementation of water reform, focussing on whether sufficient progress against commitments on water property rights had been achieved.

Regional Statement — National Competition Policy changes

In the August 2001 Regional Statement — *Stronger Regions, A Stronger Australia* — the Government announced a number of proposed changes to the current NCP arrangements, building on the reforms agreed by COAG in November 2000.

The Commonwealth believes that the current public interest test of the NCP should be strengthened to specifically require that policies be assessed against the interests of rural and regional communities. This is in addition to the criteria already identified in the CPA.

These proposed changes will meet two important needs:

- improving the operation of the public interest test that is applied to the review of policies under NCP by ensuring that rural and regional matters are fully and appropriately addressed. This will provide reassurance to regional communities that their interests will be properly considered in NCP reviews; and
- helping to counter misunderstandings about the purpose and effect of measures resulting from NCP. Requiring governments to achieve review processes that involve adequate public consultation and education will assist in explaining what changes do and do not result from NCP, and that NCP does not require such measures as mandatory public tendering, privatisation and downsizing.

To avoid misunderstandings about the operation of NCP, the Commonwealth will propose that the CPA be amended to require governments, in undertaking reform commitments, to commit to public consultation where reform is proposed and public education where reform is implemented. Review processes can be enhanced if governments ensure that:

- the social, rural and regional impacts of a policy or course of action are identified and assessed;
- the terms of reference of reviews require that reviewers seek the views of key social, rural and regional stakeholders as well as those of interested parties generally to ensure that the broadest range of views

on the matter under review are considered, and that review reports identify rural and regional impacts;

- review processes are transparent and readily accessible by stakeholders and the general community; and
- as part of a public education process, the decisions of governments regarding any reviews are the subject of clear announcements by the relevant Minister explaining the reasons for the decisions and the expected benefits to the community.

To ensure accountability, the Government will also propose that the NCC be required to assess whether jurisdictions have met the commitments on consultation and education. This will be part of the NCC's recommendations to the Government about the eligibility of the States and the Territories for competition payments. The NCC reports on each jurisdiction's progress in implementing NCP and related reforms on an annual basis.

Finally, the CPA will be amended to enable the President of the NCC to designate a member of the Council to give particular consideration to rural and regional interests.

Treasury internet site

Various Commonwealth publications relating to NCP matters are available from the Commonwealth Department of the Treasury website — www.treasury.gov.au.

Other relevant sites include the Department of Finance and Administration (www.finance.gov.au); National Competition Council (www.ncc.gov.au); the Productivity Commission (www.pc.gov.au); the Commonwealth Competitive Neutrality Complaints Office (www.ccnco.gov.au); and the Australian Competition and Consumer Commission (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 3 on page 15).

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 1.4.1).

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

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

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

Box 2: When is legislation anti-competitive?

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

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

The objective of the CPA legislation reform program is to remove restrictions on competition that are demonstrated not to be in the interest of the community as a whole. However, following the Prime Minister's policy statement *More Time for Business* (1997), the 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 the paperwork burden for business.

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

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

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

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

Box 3: Assessing the public interest

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

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

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

The Commonwealth's compliance with its legislation review requirements is independently assessed by the National Competition Council (NCC), and is also reported in *Regulation and its Review 2000-01*[3].

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

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

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

1.2 Commonwealth Legislation Review Schedule

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

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

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

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

The CLRS as at 1 April 2002 is at Appendix A.

Reporting requirements for legislation reviews

The following sections provide information on Commonwealth progress during 2000-01 in meeting its scheduled legislation review commitments.

This information has been organised to reflect both the review's scheduled commencement date, and the degree of progress made to date. For each individual review, information is provided on the following:

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

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

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,[6] and the commencement date of the review, are also identified.

Terms of reference

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

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

The Office of Regulation Review (ORR) 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, the

6 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.

ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[7]

Review terms of reference not published in previous Commonwealth National Competition Policy Annual Reports are included in Appendix B see page 159.

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

Review progress or recommendations and Government response

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

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

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

1.2.1. Legislation scheduled for review in 1999-2000 — Reform not finalised by 30 June 2000

Previous Annual Reports outlined the progress of those legislation reviews scheduled to commence within that year (or earlier). Many of the reviews have not reached the reform implementation stage by the end of the reporting period.

The following sections update the progress of these reviews and any reforms that have consequently been implemented. The reviews are grouped according to the extent of progress made.[8]

1.2.1.1 Reviews completed and reform outcomes announced

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

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

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

Review progress

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

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

Government response

The Treasurer's press release of 14 March 2002 (joint with the Minister of Finance and Administration) noted that this completes this review commitment under the CLRS. This press release is available at http://www.treasurer.gov.au.

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

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

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

The review was undertaken by a taskforce which comprised seconded officials from Environment Australia, the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Department of Industry, Science and Resources, the Department of Health and Aged Care and the ORR. A consultant from the Allen Consulting Group assisted the panel.

Review progress

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

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

The main recommendations of the report are:

- consideration should be given to whether hazardous wastes should be prescribed so as not to include household wastes (which are defined as 'other wastes' in the Basel Convention);

- the Act should be amended to exclude from the definition of hazardous wastes those wastes that derive from the normal operations of a ship, the discharge of which is covered by another international instrument;

- consideration should be given to whether, in deciding to grant a permit, explicit reference should be made to: in the case of export permits — the degree of competition in the domestic market; and in the case of import permits — whether imports are necessary to achieve critical mass and/or a reasonable degree of competition in the domestic recovery market;

- the Hazardous Waste (Regulation of Exports and Imports) (OECD Decision) Regulations should be amended to bring them in line with the OECD Decision provisions whereby once a competent authority has notified the OECD Secretariat of a decision to not raise objections over certain types of shipments notification must still be provided to that country but the 30 day objection period is waived;

- existing pre-approval mechanisms appear to have limited industry understanding, and in any case appear to be less effective than would be hoped. To the degree possible, Environment Australia should seek to encourage the uptake of pre-approval domestically and abroad and should encourage overseas parties to ensure that pre-approval provides a meaningful reduction in the administrative costs of the HWA and the Basel Convention generally;

- fees for permits should be reviewed so that, in addition to being based on cost recovery principles, their relative levels do not unnecessarily distort the decision to send hazardous waste to either Basel or OECD destinations;

- while it is administratively convenient to establish default insurance requirements, applicants should be free to make the case for lower insurance obligations;

- it should be made clear to applicants that insurance may be able to be held by parties other than the applicant. The applicant would be required to demonstrate that appropriate insurance is held at every stage of the shipment;

- Environment Australia should continue to take steps to encourage overseas parties to accept electronic documentation as part of the HWA notification and consent procedures; and

- Environment Australia should be required to publish information about the actual (that is, in comparison to permitted) shipments of hazardous waste.

Government response

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

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

The *Ozone Protection Act 1989* and the *Ozone Protection (Amendment) Act 1995* implement the provisions of the *Montreal Protocol on Substances that Deplete the Ozone Layer*. The Act regulates the phase out of ozone depleting substances (ODS), in some cases ahead of the Montreal Protocol requirements where consultations with industry determined a faster phase out was possible.

The terms of reference were agreed to in early 2000.

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

Review progress

A review of the legislation was completed in January 2001 and endorsed by the Minister for the Environment and Heritage in May 2001. The review recommended that:

- the Ozone Protection Reserve be extended to include all applications, revenue and expenditure associated with ozone protection, including that associated with the National Halon Bank;

- Environment Australia develop longer-term budgets for its ozone protection activities;

- a fee be introduced for processing Section 40 exemptions under the legislation;

- Commonwealth end-use powers be elaborated and exercised in a new part of the legislation;

- the Commonwealth consider early extension of the legislation to ensure national consistency in ozone protection regulation across all States and Territories, in relation to supply and end-use; and

- noting widespread support from stakeholders, the Commonwealth should determine, upon direct and early advice from relevant agencies, whether the legislation should be extended to cover synthetic greenhouse gases used in Montreal Protocol industries.

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

Government response

Environment Australia is working closely with the Australian Greenhouse Office, industry and State and Territory agencies to implement the review recommendations. Regulation Impact Statements (RISs) are being prepared in consultation with the ORR and stakeholders to determine the most appropriate way forward.

Prices Surveillance Act 1983
(Department of the Treasury)

The *Prices Surveillance Act 1983* (PSA) assigns three specific functions to the ACCC. These are: to review price rises notified to the ACCC by certain organisations (this function is commonly referred to as 'prices surveillance'); undertake monitoring of prices or other matters for particular organisations, products or services (called the monitoring

function); and to hold inquiries into price and other matters as directed by the Commonwealth Government (the inquiries function).

The Productivity Commission commenced a nine-month inquiry on 14 February 2000, for which the reporting date was later extended to August 2001. This extension was so that the inquiry could be conducted in tandem with a review of the National Access Regime (see page 26), to accommodate overlapping issues.

Review progress

The final report was received by Government on 22 August 2001.

Government response

The Government released its response and tabled the final report on 20 August 2002. The Treasurer's press release of 20 August 2002 and the Government's response to the report are available at http://www.treasurer.gov.au.

Petroleum (Submerged Lands) Act 1967
(Department of Industry, Science and Resources)

The review of this Act was included in the National Review of Petroleum (Submerged Lands) Acts (see page 82).

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

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

This review was originally scheduled to commence in 1997-98 but was deferred twice.

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

Review progress

The final report was received by Government on 18 December 2001.

Government response

An interim response was released by the Minister for Revenue and the Assistant Treasurer on 17 April 2002 and is available at http://assistant.treasurer.gov.au.

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

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

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

Review progress

A position paper was released in March 2001. The final report was received by the Government on 3 October 2001.

Government response

The Government released its interim response and tabled the report on 17 September 2002. The Treasurer's press release and the Government's interim response to the report are available at http://www.treasurer.gov.au.

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

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

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

The review, with secretariat support provided by the Department of Agriculture, Fisheries and Forestry Australia (AFFA), was conducted by the following three person committee:

- Mr Malcolm Irving, Chair: Chairman of Caltex Australia and the Australian Industry Development Corporation. He is also a director with Telstra, a member of the Supermarket to Asia Council and was Chair of the Australian Horticultural Corporation for nine years;

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

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

Review progress

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

The review recommendations were:

Recommendation 1

The Committee recommends that the WMA be amended so that the objective(s) of the legislation are stated explicitly, to provide a common reference point for future work on wheat marketing arrangements.

Recommendation 2

The Committee recommends that the WMA be amended to ensure that the Wheat Export Authority (WEA) is totally independent in carrying out its functions, and recommends consideration of the following:

- the system of administering non-AWB (International) Limited (AWBI) exports of wheat be simplified; and
- board members be selected with an increased emphasis on business skills such as finance, marketing and business management.

Recommendation 3

The Committee recommends that the WEA introduce a simplified export control system for a three-year trial period where:

- it issues annual licences on a fixed-fee basis to exporters who can demonstrate that they meet certain criteria including integrity, competency, financial standing, and a commitment to providing required information;
- such licences include appropriate penalties for non-compliance with the terms of the licence; and
- there is an appeal mechanism against rejection of a licence application, or the withdrawal of a previously approved licence.

Recommendation 4

The Committee recommends that:

- the process of the 2004 review should be clarified within 90 days after the Government has announced its response to the NCP review's

recommendations, and this process clearly communicated to the Minister and stakeholders, followed by annual progress reports as well as the final report as scheduled in 2004; and

- the review incorporate NCP principles in its assessment.

Recommendation 5

The Committee recommends that:

- the Government convene a continuing joint industry-government forum to discuss industry policy issues and processes, including relevant performance indicators for the 2004 review, under the leadership of an independent chair; and

- this forum would be jointly funded by the industry and Government, and would not exercise regulatory powers.

Recommendation 6

The Committee recommends that the single desk be retained until the scheduled review in 2004 by the WEA of AWBI’s operation of the single desk. However, the main purpose and implementation of this scheduled review should be changed so that it provides one final opportunity for a compelling case to be compiled that the single desk delivers a net benefit to the Australian community. In particular;

- the WEA review would allow further information to be gathered about the level of single desk price premiums and about the ability of AWBI to achieve significant and sustainable cost savings in the supply chain for the benefit of growers; and

- if no compelling case can be made by the time of the 2004 review that there is a net public benefit, then the single desk should be discontinued; but

- if a compelling case can be made by the time of the 2004 review that there is a net public benefit, then the single desk should continue with ongoing regular WEA reviews of AWBI’s performance in managing the single desk, and if necessary, a further NCP review in 2010.

Recommendation 7

The Committee recommends that the WMA be amended to suspend Section 57(3A) (which requires the WEA to consult with nominated company B (AWBI) before giving consent to applications to export in containers and bags) to enable a three-year trial of more competitive arrangements for the export of wheat in containers and bags to all markets except those markets where there is minimal freight rate differential between containers and bags, and bulk wheat.

Recommendation 8

The Committee recommends that the WMA be amended to suspend, for durum wheat only, Section 57(3B) (which requires the WEA to obtain prior approval in written form from nominated company B (AWBI) before giving consent to applications to export bulk wheat), and Section 84(1) (which states that nominated company B (AWBI) must purchase all wheat that is offered to the company for inclusion in a pool), to enable a three-year trial of more competitive arrangements for the export of durum wheat.

Government response

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

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

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

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

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

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

The review terms of reference required an examination of relevant matters in Clause 4 of the CPA (see page 126). The Government's response was that there would be no legislative or significant structural change to the current arrangements. The recommendation from the report for a joint industry forum was not adopted by the Government as such an initiative was seen to be mainly an issue for industry to bring forward, if it considers there is a need for new consultative arrangements.

1.2.1.2 Reviews completed, recommendations under consideration

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

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

The review of the Export Control (Unprocessed Wood) Regulations was originally scheduled for 1997-98, however, it was deferred to 1999-2000.

The terms of reference for this review were approved on 8 March 2000.

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

Review progress

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

Recommendation 1

The Government should remove export controls over sandalwood.

Recommendation 2

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

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

Recommendation 3

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

- remove the requirement for an export licence for any hardwood woodchips or other unprocessed wood produced from wood harvested in a native forest — including those native forests outside RFA regions; or
- allow the export of hardwood woodchips from regions not covered by an RFA under licence where options for a future comprehensive, adequate and representative forest reserve system would not be compromised by the granting of such a licence.

Government response

A Government response is expected during 2002.

1.2.1.3 Reviews commenced but not completed

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

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

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

Review progress

The Productivity Commission released an issues paper in December 2001, seeking submissions by 22 February 2002. A draft report was released on 16 May 2002, and is available at www.pc.gov.au. The final report was received by the Government on 16 August 2002.

1.2.1.4 Reviews not commenced

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

This review was deferred to 1999 and had not commenced by 1 April 2002.

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

The Government has not finalised the timing or manner of review of legislation relevant to anti-dumping and countervailing matters.

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

This review had not commenced by 1 April 2002.

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

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

This review had not commenced by 1 April 2002. Draft terms of reference and timeframe for the review are yet to be finalised.

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

On 24 August 1999, the Minister for Financial Services & Regulation agreed to defer this review until the second half of 2000. The Minister also agreed to the deletion of the following acts from the CLRS:

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

The following two regulations remain on the CLRS:

- Australian Dried Fruits Board Regulation under the *Australian Horticultural Corporation Act 1987* (AHC Act); and
- Dried Fruit Export Control Regulations 1991 under the AHC Act.

In March 1998, the horticultural industry established the Horticultural Industry Alliance Steering Committee (HIASC) to identify options for reforming the Australian Horticultural Corporation (AHC), the Horticultural Research and Development Corporation (HRDC), and the Australian Dried Fruits Board (ADFB) to deliver marketing and research and development services. These statutory bodies were established under the AHC Act and the *Horticultural Research and Development Corporation Act 1987* (HRDC Act).

The HIASC adopted an extensive consultation process to canvass the views of stakeholders throughout the industry. In July 1999, it submitted

its final report (White Paper) to Government and industry, recommending the establishment of a company limited by guarantee under Corporations Law to service the future industry requirements of Australian horticulture. The Government accepted the recommendation and started the legal processes, the development of legislation and parliamentary approval of the new company. These culminated in the passage of the *Horticulture Marketing and Research and Development Services (Repeals and Consequential Provisions) Act 2000* in December 2000.

The new Act repealed the AHC Act and the HRDC Act, and abolished the statutory bodies established under those Acts when their assets, liabilities and staff were transferred to the new industry services company, Horticulture Australia Limited (HAL), from 1 February 2001.

The provisions of the Australian Dried Fruits Board Regulation were not transferred to the new Act. The export control powers of the ADFB were transferred to HAL for a transitional period of a maximum of two years. A review, where a RIS will be undertaken, will determine whether HAL should continue to have such powers after the transition period.

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

The *Insurance (Agents & Brokers) Act 1984* was repealed from 11 March 2002 by the *Financial Services Reform (Consequential Provisions) Act 2001*. The provisions of the Insurance (Agents & Brokers) Act will continue to apply to certain people during the two year transitional period provided for under the Financial Services Reform (Consequential Provisions) Act.

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

This review had not commenced by 1 April 2002.

1.2.2 Legislation scheduled for review in 1998-99 — Reform not finalised by 30 June 2000

1.2.2.1 Reviews completed and reform outcomes announced

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

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

The Australia New Zealand Food Authority (ANZFA) advised stakeholders of the NCP legislation review through a notice on its website posted on 26 May 2000, and an advertisement in national newspapers in accordance with the requirements of the terms of reference. In addition, ANZFA included the notice and call for submissions in a mail-out to over 200 stakeholders. The notice and advertisement provided background on the review, and invited all interested persons to make submissions by 7 July, and comments on the likely effects on competition and business of the legislative restrictions imposed by the Code, including the potential regulatory impact on consumers, industry, government and the wider community.

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

Review progress

The review report was forwarded to the responsible Minister in February 2002. The review committee found that the Code did act to restrict competition and, while it achieved its objectives, particularly the protection of public health and safety, it also imposed costs on industry and government. The review committee recommended a more

cost-effective means be adopted to achieve the Code's objectives through a new code based on minimum effective regulation principles. The report is available on the ANZFA website at www.anzfa.gov.au.

Government response

In November 2000, all Government Ministers in Australia and New Zealand decided to replace the code with a new code based on minimum effective regulation principles, and the old Code will be abolished from December 2002. Given this, the Government considers no further action is required. The Government's response is available on the ANZFA website at www.anzfa.gov.au.

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

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

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

The committee advertised its terms of reference nationally, received submissions, undertook consultations with representatives of the organisations and persons making submissions, published an interim report, considered further submissions received on the interim report and published a final report on parallel importing under the Copyright Act and a comprehensive final report, Review of Intellectual Property Legislation under the Competition Principles Agreement.

Review progress

The review committee presented its Report on Parallel Importing under the *Copyright Act 1968* in June 2000 and its final report, Review of Intellectual Property Legislation under the Competition Principles Agreement, dated September 2000. The report was released in December 2000, and made 26 recommendations. These included measures to improve the perceived strength and quality of Australian patents and retaining distinctive treatment of intellectual property rights under the TPA.

In relation to the Copyright Act, the committee recommended that the parallel importation provisions be repealed, and that there be no extension of the copyright term of protection without full review of the costs and benefits. It also recommended measures confirming the intent to allow parallel importation of trade marked goods. In general, it endorsed the reforms in the *Copyright Amendment (Digital Agenda) Act 2000* and the *Copyright Amendment (Computer Programs) Act 1999*. To the extent that the amendments did not already do so, it recommended that the efficient operations of the Internet be facilitated. It also recommended that the Crown should not by default hold copyright in works commissioned by it, that the cap on the royalties payable by broadcasters for broadcasting sound recordings be removed, that, in general, copyright royalty collecting societies be subject to closer supervision and greater accountability under the TPA, and that no immediate move be made to implement the simplification of the Copyright Act.

Government response

The Government announced its response to the review on 28 August 2001. The changes announced for Australia's patent and trade marks systems included raising the threshold tests for obtaining a patent to international standards, implementing a grace period to protect a patent application against invalidation by inadvertent or ill-timed public disclosure, and amending the *Trade Marks Act 1995* to remove the impediment to the parallel importation of legitimately trade marked goods.

The Government fast-tracked implementation of the more significant patent initiatives. The *Patents Amendment Act 2001* amends the *Patents*

Act 1990 (the Act) to strengthen the novelty and inventiveness requirements of the Act. The introduction of a grace period for patents will be achieved through amendments to the Patents Regulations 1991. These amendments to both the Act and Regulations will commence on 1 April 2002.

It is expected that a Patents Amendment Bill and a Trade Marks Amendment Bill implementing the remainder of the recommendations accepted by the Government will be introduced into Parliament later in 2002.

In relation to the Copyright Act, the Government accepted the recommendation to repeal copyright control over parallel importation except in relation to films. The Copyright Amendment (Parallel Importation) Bill 2001 was introduced into the House of Representative in February 2001 and passed in the House in June 2001. Consistent with the committee's report on removing restrictions on parallel importation, it proposed to permit the parallel importation of books (including printed music), computer programs and periodical publications.

The Government accepted the Committee's recommendations regarding the copyright term and the efficient operations of the Internet. In regard to Crown ownership of commissioned works, the Government decided to consider best practice guidelines for the Commonwealth in commissioning works to eliminate unjustifiable advantage to the Government. The Government did not accept the recommendation to remove the cap on royalties for broadcasting sound recordings. The Government, in accepting in part the Committee's recommendations regarding collecting societies, identified existing as well as future actions to implement the Committee recommendations.

1.2.2.2 Reviews completed, recommendations under consideration

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

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

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

This review was originally scheduled to commence in 1997-98. However, it was rescheduled to commence in 1998-99 due to changes in the work program of the reviewer, the Productivity Commission.

The review commenced in March 1999.

Review progress

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

Government response

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

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

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

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

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

Government response

The Minister for Agriculture, Fisheries and Forestry has agreed to all of the review recommendations. The timeframes for implementation are being developed in consultation with industry.

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

The objective of the *Financial Transactions Reports Act 1988* is to facilitate the administration and enforcement of taxation laws, and laws of the Commonwealth and the Territories other than taxation laws, and to make information collected for these purposes available to State

authorities to facilitate the administration and enforcement of the laws of the States.

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

Review progress

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

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

Government response

The Government is considering its response.

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

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

The *Land Acquisitions (Defence) Act 1986* facilitated the acquisition of public park land in New South Wales for defence purposes and the *Land Acquisition (Northern Territory Pastoral Leases) Act 1981* was used to

compulsorily acquire two pastoral leases (Mudginberri and Munmarlary) for subsequent inclusion in Kakadu National Park.

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

Review progress

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

Government response

There is no Government response to the competition policy issues identified by the review.

1.2.2.3 Reviews commenced but not completed

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; Mr Angus Horwood, RECFISH; Mr Frank Meere, Acting General Manager, Australian Fisheries Management Authority; Mr Bill Nagle, Chief Executive Officer, Australian Seafood Industry Council; Dr Connall O'Connell, First Assistant Secretary, Environment Australia;

Dr Ian Poiner, Program Manager, Marine Research, CSIRO; and Mr Jonathon Barrington, Director, Strategic Fisheries Policy Section, AFFA (replacing Mr Andrew Pearson, Director, Fisheries Policy and Trade Section, AFFA).

Review progress

The review was initially expected to be completed by November 2000. However, in ensuring that all aspects of the NCP principles have been addressed, the Fisheries and Aquaculture Branch of the Department of Agriculture, Fisheries and Forestry has been working with the Chairman of the Committee of Officials to incorporate a number of amendments to the draft review document. It is anticipated that these amendments will be finalised in early 2002.

Government response

Recommendations for reform arising from the review will be considered in 2002 or early 2003 by the Minister for Forestry and Conservation, and implemented as appropriate.

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

This review was added to the CLRS for review in 1998-99 and commenced in January 2000. The review is being overseen by a steering committee comprised of:

- Dr Louise Morauta, Acting Deputy Secretary, Department of Health and Ageing;
- Mr John Jepsen, General Manager, Structural Reform Division, Department of the Treasury; and
- Ms Christianna Cobbold, Assistant Secretary, Health Capacity Development Branch, Department of Health and Ageing.

The Act establishes the Medicare benefits scheme and sets out the arrangements that apply to the provision of pathology services. The main provisions relating to pathology services are contained in Part IIA, however, other parts of the Act also relate to the provision of pathology services and these have been included in the review. In addition, the Act

also provides for a range of regulations and other pieces of delegated legislation to be made which established the pathology operating framework. All these pieces of legislation come under the scope of this review.

Review progress

It is intended that the report of the review be released to stakeholders in July 2002 as an exposure draft. The exposure draft will explain the legislation in detail and provide suggestions as to areas where the legislation could be improved. It is expected that the review will be finalised within the latter part of 2002.

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

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

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

The review was conducted by the Australian Law Reform Commission, which is also examining other legal and policy issues in relation to the Act.

Review progress

The terms of reference require the review to report by 31 December 2000. Subsequently, the Attorney-General agreed to an extension of the time for reporting to 30 April 2001.

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

Government response

The Government is yet to respond.

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

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

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

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

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

Additional objects of this Act include:

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

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

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

Review progress

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

The Attorney General tabled the report of the Australian Law Reform Commission, *Confiscation that Counts,* on 16 June 1999. The Commission

had been unable to complete the competition principles review and recommended that a working group be established to complete aspects of the Commission's review and examine certain matters. The competition principles review of the *Financial Transaction Reports Act 1988* (FTR Act) was completed in August 2000. That review included a review of Division 4 of Part IV of the Proceeds of Crime Act as well as of Part III of the FTR Act, both parts dealing with various obligations on financial institutions such as banks and like organisations to retain various records and documents. Division 4 of Part IV of the Proceeds of Crime Act, which imposes record retention obligations on financial institutions, is the only Part of the Proceeds of Crime Act which affects the business sector.

Government response

The Minister for Justice and Customs proposed that the record retention obligations in Division 4 of Part IV of the Proceeds of Crime Act be moved to the FTR Act as part of the Proceeds of Crime (Consequential Amendments and Transitional Provisions) Bill 2002, which was introduced along with the Proceeds of Crime Bill 2002 in March 2002. Any amendments to those provisions will thus be dealt with by amending the FTR Act. Amendments to the FTR Act are currently being considered, and may be addressed later in 2002.

1.2.2.4 Reviews not commenced

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

The *Dairy Produce Act 1986*, at the time of the establishment of the CLRS, specified the objectives, functions and administrative requirements for the Australian Dairy Corporation (ADC), and provided for the operation of the Commonwealth's Domestic Market Support scheme.

The review of the Dairy Produce Act was scheduled to be undertaken by the Productivity Commission in 1998-99 with the terms of reference cleared by the ORR in December 1998.

However, the Australian dairy industry has been undergoing significant reforms, with the cessation of the Commonwealth Domestic Market Scheme and State deregulation of farm gate prices for drinking milk on

30 June 2000. In light of these events, the Prime Minister and the then Minister for Financial Services and Regulation agreed to the request of the Minister for Agriculture, Fisheries and Forestry to defer the commencement of this review until early 2002. Furthermore, the ADC announced the cessation, from June 2002, of the cheese single desk sales arrangements to Japan.

Officials are considering whether there is a case for deferring this review pending further industry reforms.

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

The review had not commenced by 1 April 2002.

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

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

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

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

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

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

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

Review progress

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

Government response

The Government is considering the recommendations of the independent steering group.

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

This review had not commenced by 1 April 2002.

1.2.3 Legislation scheduled for review in 1997-98 — reform not finalised by 30 June 2000

1.2.3.1 Reviews completed and reform outcomes announced

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

The legislation provides the basis for determining the customs value of goods imported into Australia. Customs value is used to determine the duty payable on imported goods, to compile import statistics and also contributes to the collection of sales tax where this is payable at the time of importation. Customs value will also contribute to the calculation of GST on imported goods after 1 July 2000. The legislation enacts Australia's obligations under the World Trade Organisation Customs Valuation Agreement.

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

Review progress

The report of the review was made public on 16 June 1999.

Government response

In early 2001, implementation of the review's recommendations commenced with Customs seeking the necessary approvals for legislative amendments. The Prime Minister and relevant Ministers have supported the amendment of the legislation. The ORR has advised that a RIS is not required.

Legislative guidelines were released for public comment in March 2002.

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

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

The Act, which was given Royal Assent in 1992, specifies (among other things):

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

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

Review progress

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

Government response

The Government response agreeing to all 23 recommendations from the NCP review of the Imported Food Control Act was issued on 29 June 2000. Since then AQIS, in consultation with ANZFA, the Australian Government Analytical Laboratories (AGAL) and industry, have made substantial progress in designing and implementing operational procedures in line with the recommendations.

Of the 23 recommendations made in the report, eight have been implemented whilst the remainder are being examined to determine possible implementation. A number of the major recommendations have been implemented (such as the establishment of an internal review system to encourage consistency and the implementation of a major Customs profile review to ensure foods are properly referred for inspection), whilst some other issues are substantially completed but awaiting legislative change. For example, AQIS is currently authorising individual importers to deal with food before inspection to bring labels into compliance. However, this is a complex system requiring AQIS granting prior approvals. The system can be made more efficient by implementing legislative changes to permit alteration of labels before inspection without having to obtain prior approval. A key focus has been to develop a co-regulatory option for the inspection and testing of imported foods. The necessary amendments to the Act to allow this have been drafted and an administrative co-regulation trial is underway involving two importers in Melbourne to test the proposed system.

Another key goal is to free up the current prescriptive inspection system for random and active surveillance of category foods and build in flexibility and a compliance history recognition function similar to that used for risk foods. This will require changes to the Regulations rather than the Act. AQIS, ANZFA and the industry are working to develop a system that reflects this policy.

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

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

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

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

Review progress

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

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

Government response

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

Legislation

The *Motor Vehicle Standards Amendment Act 2001* which provides a regulatory framework for the new arrangements, received Royal Assent on 1 October 2001 and will commence on a date to be proclaimed or within six months of Royal Assent.

Draft regulations and determinations were provided to the Rural and Regional Affairs and Transport Legislation Committee as part of their scrutiny of the Amendment Bill. A RIS was included in the Explanatory Memorandum to the Amendment Bill.

Registered Automotive Workshop Scheme

The Registered Automotive Workshop Scheme (RAWS) replaces the current 'type' approval with a vehicle by vehicle inspection and approval, which will achieve a greater level of assurance that all vehicles, when first supplied to the market in Australia, comply with the applicable Australian Design Rules. The number of used vehicles per category that can be imported has been increased from 25 to 100. This should help to improve the business viability of importers and converters of genuine specialist and enthusiast vehicles.

RAWS was developed in consultation with industry and includes measures to clean up malpractices and backyard operations, which should help to protect the image of responsible businesses in the used vehicle trade.

Transitional arrangements

Since 8 May 2000, all new approvals issued for used vehicles under the existing LVS have been required to meet the Specialist and Enthusiast Vehicle Scheme (SEVS) eligibility criteria. This has been managed administratively through the issue of the Administrator of Vehicles Standards Circular 0-2-12. The content of this circular is reflected in the proposed regulations, which set down the procedures for eligible vehicle models to be placed on a Register of Specialist and Enthusiast Vehicles.

On commencement of the legislation, existing approvals for used imported vehicles will become transitional approvals. Vehicle models meeting the SEVS eligibility criteria will be able to be supplied to the market under the current arrangements until 7 May 2003, when the

RAWS becomes mandatory, or under the RAWS from commencement of the legislation. Transitional approvals for vehicles not meeting the SEVS eligibility criteria will be terminated on 7 May 2002.

The generous transition period provides businesses with time to prepare for the changes and for SEVS eligible vehicles to be plated under both arrangements until 8 May 2003.

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

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

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

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

Review progress

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

Government response

The Government has approved the report and its recommendations and it has been forwarded (out of session) to the Standing Committee on Agriculture and Resource Management (SCARM) and the Standing

Committee on Fisheries and Aquaculture for information. The report has been made public.

1.2.3.2 Reviews completed, recommendations under consideration

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

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

Review progress

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

The registration of private sector trustees may be examined as part of the wider ranging review of the corporate insolvency system under consideration by the Government, in conjunction with ITSA.

Higher Education Funding Act 1988, Vocational Education & Training Funding Act 1992 and any other regulation with similar effect to the Higher Education Funding Act 1988
(Department of Education, Science and Training)

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

Review progress

The deadline for the provision of the final report was extended to March 1998, with the review committee 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 for the same taxes and charges that apply to private higher education providers, once ownership and control issues are rationalised; and

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

Government response

While the Government has not responded formally to the recommendations of the West Review it has introduced reforms encouraging greater diversity of provision and competition in, *inter alia*, the vocational and higher education sectors. These are detailed below.

Furthermore, the Minister for Education, Science and Training announced a Higher Education Review on 5 April 2002 to identify the

scope for improvements to the higher education sector and how they could be facilitated. Specific issues to be examined include equitable access, universities' role in regional development, research concentration, university specialisation, governance arrangements, industrial relations, balancing supply and demand and university financing.

Vocational education and training

Funding for the provision of vocational education and training is a shared responsibility between the Commonwealth and States, with the States being responsible for the delivery and regulation of training. Expenditure on publicly funded vocational education and training is estimated to be $3.5 billion in 2001. The Commonwealth provides leadership through involvement in national policy making and provided funding to the States of around $1 billion in 2001 through the Australian National Training Authority (ANTA) Agreement. The Commonwealth's goals are focused on promoting national consistency and higher quality in vocational education and training and expanding New Apprenticeships.

The national User Choice policy was agreed by the Commonwealth, States and Territories and implemented by the States and Territories progressively since 1998. The User Choice policy enables employers and New Apprentices to choose a Registered Training Organisation, either public or private, according to their needs for off-the-job training and to negotiate aspects of their training. Public funding flows from the state training authority to the chosen provider. The User Choice policy is designed to stimulate greater provider responsiveness and flexibility by creating a more direct, demand driven market relationship by allowing a choice of public or private Registered Training Organisations.

Competition in the training market is also facilitated by regulatory arrangements, based on national agreement to the Australian Quality Training Framework, that apply equally to public and private training organisations.

While User Choice has been widely applied, there remain some restrictions on its application. Specifically, User Choice policy states that choice of provider may be restricted in 'thin markets', that is, where there are too few New Apprenticeships in a given location or occupation to sustain a large number of providers. In such situations, provision of

training is generally restricted to public institutes of Technical and Further Education (TAFE) or only limited competition with TAFE is allowed.

A number of reviews and evaluations of the User Choice policy have been undertaken. A 1999 evaluation of User Choice found strong support for the policy among employers. However, there were concerns expressed by industry and enterprises about the lack of consistency in implementation of User Choice across States. Specifically, there were concerns about impediments to interstate training delivery and lack of consistent application of administration procedures for New Apprenticeships.

Further reviews conducted in 1999 and 2000 concluded that User Choice had promoted flexibility, responsiveness and innovation in delivery of training. In a survey of 350 employers, conducted by the Australian Chamber of Commerce and Industry in March 2001, employers said that User Choice had led to greater responsiveness and relevance in training provided. However, employers expressed concern with inconsistency and slow progress in the implementation of User Choice in some areas. ANTA is currently undertaking an evaluation of User Choice to examine client support and the effectiveness of measures to improve implementation and consistency of User Choice.

Higher education

The higher education sector is increasingly being required to respond to student choices as students contribute more to the costs of their education and with the increasing incidence of fee-paying opportunities. This has been achieved first through the introduction of overseas fee-paying opportunities in 1986, the introduction of the Higher Education Contributions Scheme (HECS) in 1989 and through domestic fee-paying opportunities for postgraduate coursework and undergraduate study. These developments have encouraged universities to become more responsive to market demands and student needs.

The Commonwealth carries major funding responsibility for higher education, though universities' revenue sources are increasingly becoming more diverse. In 1999, Commonwealth grants, excluding HECS liabilities, accounted for 48 per cent of universities' revenue down

from 63 per cent in 1990. State funding of universities is relatively small scale.

With increasing demand for further training among professions and limits to public funding, the Government introduced domestic fee paying opportunities for postgraduate coursework in 1987. Demand for these types of places and courses is strongest among persons already in employment in business and service professions wanting to upgrade their skills. This initiative provided scope to develop a range of specialist postgraduate courses to meet industry's needs and provide universities with an additional income stream.

To further facilitate participation in fee-paying postgraduate coursework, the Government has indicated, as part of Backing Australia's Ability announced in 2001, that from 2002, students participating in such courses will be eligible for income contingent loans under the Postgraduate Education Loans Scheme (PELS). PELS will operate along similar lines to the existing HECS. Students will be permitted to borrow under PELS to meet tuition costs but not accommodation costs.

Expansion of student choice also formed part of the 1996 reforms to higher education through the introduction of domestic fee-paying opportunities for undergraduate study from 1998. These are restricted to 25 per cent of enrolments in any particular course. To date, the uptake of domestic undergraduate fee-paying places has been relatively small scale.

International trade in education services

From 1 January 1995 the World Trade Organisation (WTO) General Agreement on Trade in Services (GATS) provided a multilateral framework of rules for trade in services, set against the background of a commitment to the expansion of such trade. Negotiations on trade in education services are currently underway, with the next phase of negotiations likely to commence in mid-2002. While trade in education services is increasing, only 21 of 142 WTO members currently have scheduled commitments to provide market access and uniform national treatment in the provision of education services.

By international standards, Australia has a relatively liberal regime on trade in education services. In terms of market access, under Australia's

existing commitments foreign institutions can supply private secondary schooling, tertiary and English language education in Australia to overseas and domestic students, provided that they meet Australian registration or other operating requirements. Australia has not made specific commitments with regard to permitting overseas teachers to enter and work in Australia. However, in practice there are minimal restrictions in this area. While an Australian negotiation on GATS is being developed, as a starting point, other countries are being encouraged to consider entering commitments on education services similar to those already agreed by Australia.

Innovation in education services and delivery

The delivery of new forms and provision of education and training services are, to a certain extent, associated with the increasing uptake of information and communications technologies. These are increasingly likely to impact on the range of education and training services and competitive pressures in the sector.

Many of these activities are focused on the so-called 'learner-earner' market, providing higher level qualifications to upgrade the skills of an internationally mobile workforce. These activities include increasing provision of distance education, offshore provision, virtual universities (including consortia) and corporate universities. They also include tailored training where short courses of work-based learning articulate or gain credit towards a formal qualification. New forms of delivery through 'e-education' are also proliferating bringing with them new providers and new collaborations among existing providers. Increasingly, this is blurring the boundaries across provider types and sectors.

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

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

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

In October 1998, submissions were sought from interested parties.

Review progress

The review was originally scheduled for completion by December 1998. The review process was delayed while the *Primary Industries Levies and Charges (Consequential Amendments) Act 1999* and other Acts were amalgamated. The resultant amalgamated acts — the *Primary Industries (Customs) Charges Act 1999* and the *Primary Industries (Excise) Levies Act 1999* — mirror the provisions contained in the earlier Acts apart from several minor changes.

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

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

Government response

A Government response is not yet finalised.

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

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

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

Review progress

The review report was released on 21 June 1999.

Government response

The Government is considering its response to the review of section 51(2) of the TPA and an announcement will be made in due course.

On 28 August 2001, the Government announced changes to section 51(3) of the Act in its response to the report of the Intellectual Property and Competition Review Committee (the Ergas Committee) report of December 2000, which also examined section 51(3) (see page 37).

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

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

The then Department of Primary Industries and Energy established a committee of officials in March 1998. The committee of officials were: Mr Kim Parkinson, Senior Manager, Australian Fisheries Management Authority; Dr Connall O'Connell, First Assistant Secretary, Environment Australia; Mr Steve Bolton, Portfolio Marine Group, Environment Australia; Mr Peter Anderson, Thursday Island Coordinating Council; Mr Geoff Dews, Thursday Island Coordinating Council; Mr Gatano Lui, Thursday Island Coordinating Council; Mr John Abednego, Torres Strait Regional Authority; Mr Stan Wright, Torres Strait Regional Authority; Mr Henry Garnier, Torres Strait Regional Authority; Mr Ted Loveday, Queensland Commercial Fishing Organisation; Mr Bill Nagle, Chief Executive Officer, Australian Seafood Industry Council; Mr Patrick Appleton, Queensland Fisheries Management Authority; Mr Tony Kingston, Manager, Torres Strait Fisheries, Thursday Island; Mr Russell Reynolds, Queensland Department of Primary Industries; and Mr Trevor Dann, Queensland Department of Primary Industries.

Review progress

The committee of officials finalised its recommendations at a third and final meeting in Brisbane on 23 and 24 June 1998. The committee was to report its recommendation to the Commonwealth Minister for Resources and Energy by September 1998, however, a final report was only completed in August 1999. This reflected delays following the October 1998 federal election and the subsequent need for updating.

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

Government response

The Government is considering its response to the review of the *Torres Strait Fisheries Act 1984* and a response is expected in 2002.

1.2.3.3 Reviews commenced but not completed

Defence Housing Authority Act 1987
(Department of Defence)

The terms of reference for this review were agreed to in June 1998. Competitive neutrality measures have been applied to the Defence Housing Authority (DHA), including a commercial rate of return, debt neutrality and a tax equivalent regime. In addition, a Services Agreement has been instituted to set DHA relations with Defence on a commercial footing, and this Agreement does not oblige Defence to exclusively use the services of the DHA. A comprehensive external review of the *Defence Housing Authority Act 1987* was commissioned by the DHA and reported in November 2000. The outcome of this review is planned to be considered by Ministers in the first half of 2002.

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

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

Review progress

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

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

The *Pig Industry Act 1986* was repealed in 2001 under the *Pig Industry Act 2001*.

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

The review of market based reforms and activities undertaken by the Spectrum Management Agency (now the Australian Communications Authority) has been combined with the review of the *Radiocommunications Act 1992* and related Acts.

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

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

Review progress

The Productivity Commission released an issues paper in August 2001 and sought submissions from interested parties and the public by 12 October 2001.

The Commission released a draft report on 28 February 2002, and it is available at http://www.pc.gov.au. The final report is to be delivered to the Government in July 2002.

1.2.3.4 Reviews not commenced

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

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

The making of Codes, formally undertaken through this Act, will take place through the process established by the *Australian Radiation Protection and Nuclear Safety Act 1998*. In addition, radiation protection legislation generally was subject to a national legislation review in 2000.

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

The review had not commenced by 1 April 2001. The Treasurer's joint press release with the Minister for Industry, Tourism and Resources of 14 May 2002, notes that discussions are ongoing between the Government and industry concerning the reform package, and the Government will pursue petroleum industry reform if there is broad industry support.

1.2.4 Legislation scheduled for review in 1996 and 1996-97 — reform not finalised by 30 June 2000

1.2.4.1 Reviews completed and reform outcomes announced

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

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

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

The review was already underway at the time of the publication of the CLRS in June 1996.

Review report

The Evatt Report was received by the Government in August 1996. The report made recommendations concerning reforms to Commonwealth,

State and Territory indigenous heritage protection regimes. The major recommendations included:

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

Government response

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

The Bill was first introduced into the House of Representatives in April 1998 and after the 1998 election was re-introduced in November 1998. 197 amendments were made to the Bill in the Senate, most of which were unacceptable to the Government. Having consulted further with all major stakeholders during 2000-01, the Government is continuing to pursue reform of the Act.

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

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

Government response

In April 2000, the Government introduced the Postal Services Legislation Amendment Bill 2000 into Parliament. This legislation formed the Government's response to the NCC review.

The Bill would have, *inter alia:*

- reduced Australia Post's reserved service to 50 grams and the standard rate;
- removed incoming international mail from the reserved service;
- provided a postal services access regime to assist competitors to gain access to services supplied by Australia Post; and
- converted Australia Post from a statutory corporation established under the *Australian Postal Corporation Act 1989*, to a public company under the general corporations law, wholly-owned by the Commonwealth.

The Bill was unable to obtain passage through the Parliament and was withdrawn in March 2001. The Government is continuing to examine measures aimed at improving the efficiency of the postal industry.

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

The purpose of the *National Road Transport Commission Act 1991* is to provide a statutory basis for the National Road Transport Commission (NRTC), which is also governed by Heads of Government Agreements scheduled to the Act. The primary role of the NRTC is to advise the

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

Australian Transport Council (ATC) on reforms that will improve the safety, efficiency, and reduce the administrative cost, of road transport. All regulatory proposals arising from these activities, which in some cases have been given effect in Commonwealth Road Transport Legislation as the basis for State and Territory legislation, have always been subject to strict regulatory impact assessments. These assessments were modified slightly in 2001 to meet guidelines issued by COAG. The NRTC works closely with the ORR to ensure competition policy requirements are met in its submissions to the ATC.

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

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

Review progress

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

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

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

Government response

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

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

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

Review progress

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

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

Government response

On 2 July 1998, the then Minister for Health and Family Services approved the report and endorsed the proposal for a second phase review of the human quarantine provisions. A discussion paper was developed drawing on four independent research papers, and an advertisement was placed in the national press on 11 April 2000 advising of its availability and calling for submissions from any interested party. The public consultation process closed on 15 May 2000. Responses from the targeted consultation process (stakeholders) and the national advertising campaign numbered 30. On 20 December 2000, the then Minister for Health and Aged Care approved the Human Quarantine Legislation Review Final Report. This report identified several issues or areas of the legislation that would benefit from immediate amendment to update the legislation and/or align it with current policy and practice. However, the final report also identified several complex issues that could not be resolved by immediate amendment to the legislation and required further consideration, research and consultation. The recommendations made in the report will therefore be progressed on two levels. Level 1 will involve preparation of drafting instructions to address the issues identified in the review as requiring immediate amendment to the legislation. Level 2 will involve undertaking a strategic examination of human quarantine in the context of current and future communicable disease management, through extensive consultation with stakeholders, including those who have made submissions to the review.

Contributors to the review will be consulted on both the immediate amendments and on the longer term strategic examination of human quarantine. Work has commenced on the immediate amendments (Level 1) and the draft bill should be submitted to the Spring Sittings in 2002.

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

The *Shipping Registration Act 1981* provides for the registration of ships in Australia. The Act is 'an Act for the registration of ships in Australia, and for related matters' and replaced the previous system of ship registration under which Australian owned ships were registered as British ships under the United Kingdom *Merchant Shipping Act 1894* (MSA). The

Shipping Registration Act adopted the MSA approach which specifically addressed the needs of large commercial vessels.

This review was scheduled for 1996-97, and the review commenced in February 1997.

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

Review progress

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

- remove the obligation to register certain ships;
- restructure the Australian Register of Ships into four parts;
- provide for the notification of non-mortgage securities in the Register;
- permit the voluntary removal of a mortgage from the Register;
- re-define the conditions under which a foreign ship subject to demise charter to Australian interests can be registered;
- allow suspension of the registration of a ship that is placed on a foreign register pursuant to a demise charter;
- remove the requirement to obtain approval for the use of a 'home port';
- simplify the requirements for the marking of a ship;
- broaden the definition of 'proper officer'; and

- provide for fixed terms for registration.

Government response

The Government has accepted the review recommendations. Policy approval to amend the Act to implement the recommendations was received in 1998, however, the Government response is yet to be completed.

1.2.4.2 Reviews completed, recommendations under consideration

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

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

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

Review progress

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

Government response

The Government is considering a response to: the Manning report; the review of the Land Rights Act by John Reeves QC; and the report of the inquiry into the Reeves review by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs.

1.2.4.3 Reviews commenced but not completed

Bills of Exchange Act 1909
(Department of the Treasury)

The objectives of the *Bills of Exchange Act 1997* are to provide uniformity of law across Australia in relation to bills of exchange and promissory notes, to provide legal certainty by confirming the nature of bills of exchange and promissory notes as negotiable instruments, and to promote efficiency in the market place which utilises bills of exchange and promissory notes as financial instruments.

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

Review progress

A final report is being prepared by the working group.

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

The review of the *Commerce (Trade Descriptions) Act 1905* (see page 78) and the Commerce (Imports) Regulations commenced on 3 July 2001.

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

The scope and timing of the review of the Commerce (Prohibited Imports) Regulations is still under consideration.

Review progress

Advertisements, published 1-3 September 2001, called for submissions from the public by 17 October 2001. Public forums that were originally scheduled for mid-September 2001 were postponed until 13-14 November 2001 due to travel restrictions.

This review is expected to report by 31 July 2002.

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

The review of the *Radiocommunications Act 1992* commenced in 1997. However, the national competition principles aspects of the review were not completed. Consequently, the NCP review of the Radiocommunications Act and related Acts has been subsumed into the review of market based reforms and activities undertaken by the Spectrum Marketing Authority (now the Australian Communications Authority) (see page 66).

1.2.4.4 Reviews not commenced

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

The review of the *Quarantine Act 1908* (Nairn Review) was underway prior to its listing on the CLRS. AQIS is identifying those parts of the Act not amended by the Nairn Review, and that restrict competition, to assist in the process of determining whether there is merit in undertaking the review at this time.

1.2.5 Legislation deleted from the CLRS

This section identifies legislation deleted from the CLRS during the period 2000-01.

Home and Community Care Act 1985
(Department of Health and Ageing)

In October 2000, agreement was reached between the former Minister for Aged Care, the Prime Minister and the then Minister for Financial Services and Regulation to the completion and tabling of a RIS with the Home and Community Care (HACC) National Program Guidelines in lieu of a full legislation review of the *Home and Community Care Act 1985*.

Subsequently, the Department commenced drafting the RIS, in consultation with the ORR and Treasury. However, during this process, it became clear that the RIS process would add little value to the contract

based service provision environment of the HACC Program and, in the ORR's view, the HACC National Program Guidelines did not impose costs or provide benefits to business. As a result, in principle agreement was obtained from the ORR and Treasury that the Department remove the Home and Community Care Act from the CLRS and proceed no further with the RIS.

As a result, the Minister for Aged Care wrote to the Prime Minister and the then Minister for Financial Services and Regulation, seeking their agreement to the deletion of the Act from the CLRS. The Parliamentary Secretary to Cabinet agreed to this on 2 October 2001. On 12 December 2001, the Parliamentary Secretary to the Treasurer agreed to the deletion of this Act from CLRS.

Previously, the restrictions on commercial suppliers providing these services has been removed.

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 was deferred pending the outcome of a separate review process required by the Government with overlapping issues.

The 2000 Review of Export Credit and Finance Services considered whether there is a need to extend competitive neutrality to the Export Finance and Insurance Corporation's (EFIC's) medium-term export finance business, having regard to the development of any viable competition in the private sector.

It was a comprehensive public review involving a national series of consultations and public submissions. The Government decided in November 2000 that it would continue its involvement in medium-term export finance business through EFIC and that the business be reviewed again by the end of 2003. The Government decided that competitive neutrality was not to be applied to EFIC's medium-term export finance business as it is not operating in a contestable market.

This review process followed earlier reforms to the Act[10] that applied competitive neutrality to EFIC's short term credit insurance operations and also removed exemptions from the *Insurance (Agents & Brokers) Act 1984* and the *Insurance Contracts Act 1984* for its short term credit insurance operations.

The Minister for Trade wrote to the Prime Minister and the Parliamentary Secretary to the Treasurer seeking deletion of this review from the CLRS. The Parliamentary Secretary to the Treasurer replied on 15 May 2002 agreeing to the deletion. The Prime Minister agreed to the deletion on 2 June 2002, and also requested that the 2003 review be independent, open to public consultation and consider the application of competitive neutrality to EFIC's medium-term export finance business.

1.2.6 Legislation added to the CLRS

This section identifies legislation added to the Commonwealth Legislation Review Schedule (CLRS) during the period 2000-01.

Commerce (Trade Descriptions) Act 1905
(Attorney-General's Department)

In 2001, the *Commerce (Trade Descriptions) Act 1905* was added to the scheduled review of the Commerce (Imports) Regulations and the Customs (Prohibited Imports) Regulations (see page 75).

10 See the 1999-2000 *Commonwealth National Competition Policy Annual Report* (p 144).

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.

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

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

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

Review progress

The consultant's final report was presented on 13 January 1999.[11] The Steering Committee accepted that the report fulfilled the terms of reference.

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

On 3 March 1999, the Standing Committee on Agriculture and Resource Management (SCARM) publicly released the report and established a jurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group (SWG) to prepare an inter-governmental response to the report's recommendations.

Government response

SCARM/ARMCANZ endorsed the inter-governmental response to the review in January 2000. The COAG Committee on Regulatory Reform cleared the response.

Following on from consideration of the recommendations in the review and preparation of the inter-governmental response, a number of processes were commenced to more closely examine how best to regulate low risk chemicals in response to the review recommendations on that issue. Based on the deliberations of the taskforce, amendments to the Agvet Chemicals Legislation have been drafted for consideration by the States and Territories prior to introduction into Federal, State and Territory Parliaments.

Working groups were established to further examine and progress the review recommendations relating to manufacturer licensing, cost recovery and the use of alternative assessment providers. Reports of these working groups are expected to be finalised in 2002 and will then proceed to the Primary Industries Standing Committee (PISC)/Primary Industries Ministerial Council (PIMC).

In addition to these groups, the Control of Use Taskforce was established by ARMCANZ to further examine the review recommendations covering matters relating to off-label chemical use, veterinary surgeons exemptions and control of use licensing. The Taskforce, comprising Commonwealth, State and Territory representatives, is in the process of implementing most of these recommendations and is giving consideration to its response to the issue of off-label chemical use.

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

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

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

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

Review progress

The review was conducted between October 1997 and June 1998.[12] The report, which covers both the NCP and MRA aspects of the review, is available on the Internet at www.pmc.gov.au. The review found that the scheme is generally working well to minimise the impediments to freedom of trade in goods and services and to establish a truly national market in goods and services in Australia. The review data indicated that the MRA has increased competition and consumer choice, and reduced business costs. In relation to the NCP review, it was recommended that all existing (potentially anti-competitive) exceptions to the MRA be retained (see recommendations 14 to 25).

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

Government response

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

The recommendations of the review, and the concerns expressed by Queensland and Victoria, will be taken up in the next review of the MRA in 2003.

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

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

Review progress

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

The main conclusion of the Review Committee could be summarised as a view that the legislation is essentially pro-competitive and, to the extent

that there are restrictions on competition (for example, in relation to safety, the environment, resource management or other issues), these are appropriate given the net benefits to the community.

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

Terms of reference

1. The Australian and New Zealand Minerals and Energy Council refers the nation's Petroleum (Submerged Lands) legislation to the Review Committee for inquiry and report by 30 June 2000.[13]

2. The national Petroleum (Submerged Lands) legislation governs petroleum exploration and development in Australia's offshore area. The legislation comprises the following Acts, as amended:

   (a) *Petroleum (Submerged Lands) Act 1967* (Commonwealth)

   (b) *Petroleum (Submerged Lands) Act 1982* (New South Wales)

   (c) *Petroleum (Submerged Lands) Act 1981* (Northern Territory)

   (d) *Petroleum (Submerged Lands) Act 1982* (Queensland)

   (e) *Petroleum (Submerged Lands) Act 1982* (South Australia)

   (f) *Petroleum (Submerged Lands) Act 1982* (Tasmania)

   (g) *Petroleum (Submerged Lands) Act 1982* (Victoria)

   (h) *Petroleum (Submerged Lands) Act 1982* (Western Australia)

   (i) *Petroleum (Submerged Lands) (Fees) Act 1994* (Commonwealth)

   (j) *Petroleum (Submerged Lands) (Registration Fees) Act 1967* (Commonwealth)

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13 On 6 June 2000 the Chairman of ANZMEC, the Hon Paul Lennon, MHA, gave approval for the date for completion of the review to be extended from 30 June to 31 July 2000 in order to provide industry stakeholders with an extended period in which to provide comments on the Exposure Draft of the Review Committee's report.

(k) State and Northern Territory counterparts to the above two Commonwealth Fees Acts and, for all the above Acts, associated Regulations, Directions and Guidelines.

3. The Review Committee shall:

(a) identify the nature and magnitude of the issues which the legislation seeks to address;

(b) clarify the objectives of the legislation;

(c) consider whether there are alternative, including non-legislative, means for achieving the same objectives;

(d) identify the nature of any restrictions on competition in the legislation;

(e) assess and balance the costs and benefits of;

i. the restrictions referred to in (d);

ii. the nation's Petroleum (Submerged Lands) legislation; and

iii. any identified relevant alternatives to the legislation, including non-legislative approaches; and

(f) make recommendations on preferred options for legislative and non-legislative measures to meet the identified objectives.

4. In undertaking the inquiry and preparing its report, the Review Committee shall have regard to:

(a) the principle that 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 can only be achieved by restricting competition;

(b) Australia's rights, obligations and duties under relevant international treaties and conventions;

(c) where relevant, effects on the environment, welfare and equity, occupational health and safety, economic and regional

development, the interests of Australian consumers, the competitiveness of business, efficient resource allocation and other material matters; and

(d) the importance of reducing compliance costs and the paperwork burden on business, where feasible.

5. The Review Committee is to advertise the review nationally, consult with key interest groups and affected parties, and note the possibility that its report may be published.

Government response

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

Two specific legislative amendments flow from the review. One will address potential compliance costs associated with retention leases and the other will expedite the rate at which exploration acreage can be made available to subsequent explorers. Policy approval has been received for these amendments to be incorporated in the Commonwealth's Petroleum (Submerged Lands) Legislation Amendment Bill 2002, which is scheduled for introduction to Parliament in 2002. This Bill will also propose the rewrite of the Commonwealth's Petroleum (Submerged Lands) Act. Amendment and rewrites of the counterpart State and Northern Territory legislation will follow.

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 commissioned a review to examine legislation and regulation which imposes controls over access to, and supply of drugs, poisons and controlled substances.

An independent Chair, Ms Rhonda Galbally, undertook the review, with advice from a steering committee representing all jurisdictions.

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

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

Review progress

The review's report has been finalised and presented to the Australian Health Ministers Conference (AHMC) which is required by the review's terms of reference to forward the report to COAG with their comments.[14]

The final report was publicly released in January 2001.

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

Comments on the review recommendations have been received from State and Territory health and agricultural departments and other stakeholders who previously provided comments for the review.

The Commonwealth Department of Agriculture, Fisheries and Forestry and the National Registration Authority for Agricultural and Veterinary Chemicals (NRA) stated they would direct their comments through the PIMC. After discussions have been held with representatives of these agencies the report will then be forwarded to the PIMC for their comment.

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

Government response

The working party expects to complete the response of the final report of Drugs, Poisons and Controlled Substances legislation shortly (it has not been completed as at 1 April 2002). It will then be progressed through Health Ministers with input from the PIMC early in 2002.

Food acts

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

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

Review progress

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

Government response

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

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

Pharmacy regulation

In 1999, the NCP Review of Pharmacy Regulation examined State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to

regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits.

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

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

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

Review progress

In February 2000, the review released its final report.[15]

In 2000, COAG referred the final report to Senior Officials for consideration by a working group. The working group was asked to consider the review report mindful of factors unique to the practice and regulation of pharmacy in Australia.

The Government will finalise this process in early 2002.

Review of legislation regulating the architectural profession

In November 1999, the Productivity Commission commenced a nine month review of the legislation regulating the architectural profession. This inquiry served as a national review of participating States and

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

Territories' legislation. Victoria, which has completed its own review, did not put its legislation forward for the national review. The Commonwealth has no legislation regulating architects.

Review progress

On 4 August 2000, the Productivity Commission completed its nine month Review of Legislation Regulating the Architectural Profession.

The final report was released on 16 November 2000.

Government response

All States and Territories have agreed to participate in the development of a national response to the review and establish a working group for this purpose.

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 1997 *More Time for Business*[16] policy statement, 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 promote effective and efficient regulation and 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 (Box 4 on page 91). The RIS must clearly identify a problem and relevant policy objectives and assess the costs and benefits of alternative means of fulfilling the objective.

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

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

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

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

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

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

The 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 2000-01*.

In 2000-01, 157 regulatory proposals required a RIS. In 133 cases a RIS was prepared, of which 129 were assessed by the ORR as being of an adequate standard. Therefore, the compliance rate at the decision making stage was 82 per cent (this is the same rate as that achieved in 1999-2000, but slightly higher than in the 78 per cent compliance rate in 1998-99).

The Government introduced 148 policy proposals via 169 Bills into Parliament in 2000-01. Of these, 56 required a RIS. Of the RISs prepared at the decision making stage, 73 per cent were adequate (compared to 80 per cent in 1999-2000). At the tabling stage, 88 per cent were adequate (compared to 95 per cent in 1999-2000).

In the case of disallowable instruments (that is, subordinate legislation or regulation), of the RISs prepared at the decision-making stage, some 85 per cent were adequate (compared to 74 per cent in 1999-2000) and 89 per cent were adequate at the tabling stage (compared to 86 per cent in 1999-2000).

In 2000-01, the ORR has continued to raise the standard of analysis required for a RIS to be assessed as 'adequate', in keeping with the Government's aim of improving the regulatory decision-making process.[17]

1.4.2 Legislation enacted since 1 July 2000 that may restrict competition

Commonwealth legislation introduced in the period 1 July 2000 to 30 June 2001 identified by the ORR as having the potential to restrict competition, is identified in Table 1. The potential impact on the community of these Acts varies from relatively minor to significant. The actual impact will depend on how the various legislative provisions are implemented and administered.

Table 1.1: Selected Commonwealth legislation introduced into Parliament between 1 July 2000 and 30 June 2001 having the potential to restrict competition

Commonwealth Acts
Broadcasting Services (Digital Television Format Standards) Regulations 2000
Health Benefits Organisation — Solvency Standard 2000 and Capital Adequacy Standard 2000
Horticulture Marketing and Research Development Services Bill 2000
Interactive Gambling Bill 2001
Radiocommunications (Datacasting Transmitter Licence Limits) Direction No. 1 of 2001
Radiocommunications (Spectrum Licence Limits — 3.4 GHz Band) Direction No. 1 of 2000

17 Productivity Commission, 2001, *Regulation and its Review 2000-01*, AusInfo, Canberra, pp. 1-11.

2 Competitive neutrality

2.1 Why implement competitive neutrality?

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

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

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

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

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

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

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

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

2.1.1 Which Government activities are subject to competitive neutrality?

The *Commonwealth Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises (GBEs), Commonwealth Share Limited Companies (CSLCs) and Commonwealth Business Units to be 'significant business activities' and, consequently, required to apply competitive neutrality.

- 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 a Special Account established by the Finance Minister under the *Financial Management and Accountability Act 1997* (FMA Act), or by another Act, or their own source of revenue through section 31 agreements under the FMA Act and Appropriation Acts.

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 competitive neutrality.

These activities include bids by Commonwealth Government in-house units for activities subject to the *Competitive Tendering and Contracting: Guidance for Managers* issued by the 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 competitive neutrality arrangements following a complaint to the Commonwealth Competitive Neutrality Complaints Office (CCNCO) (see Section 2.3). Such activities may choose to implement competitive neutrality

principles on a notional basis to pre-empt a complaint on the grounds of an unfair competitive advantage.

Competitive neutrality 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 reviews, including social welfare and equity issues such as CSOs.

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 FMA Act.

2.1.2 What does the application of competitive neutrality require?

The current *Commonwealth Competitive Neutrality Guidelines for Managers*[1] provides assistance with the practical application of the competitive neutrality principles, as identified in the CNPS, to a wide range of Commonwealth business activities.

In general terms, competitive neutrality implementation involves:

- adoption of a corporatisation model for significant GBEs;
- payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;
- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;

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1 The *Commonwealth Competitive Neutrality Guidelines for Managers* is currently being updated and a new version is expected to be released during 2002.

- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of competitive neutrality components is not simply accommodated through a reduction in profit margin);
- compliance with those regulations to which private sector competitors are normally subject, for example, planning and approvals processes; and
- pricing of goods and services provided in contestable markets to take account of all direct costs attributable to the activity and the applicable competitive neutrality components.

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

Example 1

Government businesses may compete predominantly against private or other government organisations that are recipients of special arrangements in relation to the payment of taxes. In these circumstances, the Government business is only required to pay the same taxes as paid by the majority of its major competitors.

Example 2

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

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 5 clarifies some common misconceptions with regard to competitive neutrality.

Box 5: Competitive neutrality — some misconceptions

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

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

- Competitive neutrality is neutral with respect to the nature and form of ownership of business enterprises. It does not require privatisation of 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).

- Competitive neutrality does not require outsourcing of Commonwealth activities — but when public bids are made under competitive tendering and contracting (CTC) arrangements, they must be competitive neutrality compliant. As a result, in-house units should not have an 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 CSO arises when the Government specifically requires a business to carry out an activity or process that:

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

CSOs are often established to meet government social policy objectives. A well known example is the requirement that Australia Post provide a standard letter delivery service throughout Australia for a uniform postage rate (currently 45 cents).

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

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

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

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

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

2.2 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 competitive neutrality requirements.

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

During 2001, the reporting process for competitive neutrality implementation has been revised, and is now based on a Department of Finance and Administration survey of Commonwealth Government agencies. This process is improving the transparency of agencies' application of competitive neutrality principles. The tables at the end of this chapter represent a new reporting format that commenced with this annual report.

2.2.1 Government Business Enterprises and Commonwealth Share Limited Companies

GBEs and CSLCs are required to have their competitive neutrality arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. The competitive neutrality guidelines require that GBEs, *inter alia*:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents;
- 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.

2.2.2 Commonwealth Business Units

Competitive neutrality arrangements applied to Commonwealth Business Units are to be approved by the responsible portfolio Minister. The competitive neutrality guidelines require Business Units to, *inter alia:*

- pay Fringe Benefits Tax (FBT) and Goods and Services Tax (GST), 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;

- 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 interest rate determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

2.2.3 Commercial business activities (over $10 million per annum)

Competitive neutrality 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 competitive neutrality guidelines require significant commercial activities to, *inter alia*:

- pay FBT and GST (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.

2.2.4 Other Commonwealth business activities

There are a number of non-significant Commonwealth business activities for which the application of competitive neutrality principles is being considered or undertaken. They may also be required to implement competitive neutrality as a result of a complaint to the 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 GST and FBT (unless exemptions are available for reasons other than government ownership) and make tax equivalent payments for remaining Commonwealth indirect taxes.

Other competitive neutrality costs may be incurred on an (auditable) notional basis, for example, payments of remaining Commonwealth direct taxes, State indirect taxes and debt neutrality charges.

2.2.5 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).

Competitive neutrality arrangements should be applied to all bids by Commonwealth Government 'in-house' units for activities subject to the *Competitive Tendering and Contracting: Guidance for Managers* 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, competitive neutrality 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 GST (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;
- 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 competitive neutrality requirements; and
- non-compliance could result in a complaint being made to the CCNCO (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 GST (unless exemptions are available for reasons other than government ownership) and tax equivalent payments for remaining Commonwealth indirect taxes. However, other competitive neutrality costs may be incurred on an (auditable) notional basis for example, payments of remaining Commonwealth direct taxes, States indirect taxes and debt neutrality charges.

2.3 Complaints alleging non compliance with competitive neutrality 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 competitive neutrality 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: 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 competitive neutrality arrangements (including a commercial activity below the $10 million per annum turnover threshold);[2]
- a Commonwealth business activity is not complying with competitive neutrality arrangements that apply to it; or
- current competitive neutrality 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 competitive neutrality arrangements are not being followed, it may directly advise government business entities as to the identified inadequacies and actions to improve compliance. If a suitable resolution to a complaint cannot be achieved in

2 This includes Commonwealth owned *Corporations Law* companies limited by guarantee, which are not otherwise subject to competitive neutrality requirements.

this manner, the CCNCO may recommend appropriate remedial action or that the Treasurer undertake a formal public inquiry into the matter.

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

2.3.1 Complaints received in 2000-01

In the period 1 July 2000 to 1 April 2002, the CCNCO carried out four investigations — ARRB Transport Research Limited; Meteorological Services to Aviation; Sydney and Camden Airports; and Docimage Business Services — arising from complaints of non-compliance with competitive neutrality principles. Progress with implementing recommendations from earlier competitive neutrality investigations is also detailed.

ARRB Transport Research Limited

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

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

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

Meteorological Services to Aviation

On 10 February 2000, Metra Information Limited — a subsidiary of the government owned Meteorological Services of New Zealand Limited — lodged a complaint with the CCNCO alleging that the Civil Aviation Safety Authority's (CASA's) administration of aviation regulations confers a regulatory advantage on the Bureau of Meteorology (the Bureau) by preventing Metra from competing in the market for meteorological services in the aviation industry.

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

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

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

The responsible Minister has indicated that the issues raised in this report have been under active consideration by the Departments of Transport and Regional Services and Environment and Heritage for some time. The Government is yet to take a policy decision in relation to this matter and current arrangements for the provision of aviation meteorological services will remain in place in the meantime.

Sydney and Camden Airports

In April 2001, a private consultancy firm on behalf of the Council of the City of Rockdale and Marrickville Council, the Council of the City of Moonee Valley and Camden Council (within whose jurisdictions lie Sydney, Camden and Essendon Airports, respectively). The complaints relate to the ownership, current lease, occupation and use of the Sydney, Camden and Essendon Airports, and the consequences of their proposed privatisation.

Following the August 2001 Government announcement of the sale of Essendon Airport to private interests, the CCNCO narrowed its investigation to focus on Sydney and Camden Airports.

The complaints arose from allegations that an inappropriate application of competitive neutrality to airport land and to Sydney Airports Corporations Limited (SACL) and Camden Airport Limited (CAL) has led to a loss of tax revenue to local councils and the potential erosion of their rate base. An additional allegation was that businesses outside the airports are disadvantaged in competing with businesses within the airport sites by virtue of the latter being 'subsidised' by the failure to appropriately apply competitive neutrality principles such as tax and regulatory neutrality.

The CCNCO has found that no action under competitive neutrality policy is required with respect to the land leasing activity of the Commonwealth Department of Transport and Regional Services or the current activities of SACL and CAL.

Docimage Business Services

On 5 June 2001, the Legal Services Association Australia (LSAA) lodged a complaint questioning whether Docimage Business Services (Docimage) is complying with the competitive neutrality policy. The complaint claims that Docimage is able to undercut the traditional market players in the legal copying and imaging market because Docimage is not subject to the same costs or tax regime as those service providers in the public sector. In particular, LSAA alleges that Docimage is exempt from Commonwealth and State taxes that apply to their private sector competitor.

The CCNCO has found that Docimage has allocated costs to its commercial operations and implemented the relevant competitive neutrality cost adjustments, including for taxation, in a manner consistent with that required of it under competitive neutrality policy.

Earlier CCNCO competitive neutrality investigations

ABC Production Facilities

The CCNCO investigation into ABC Production Facilities found that ABC Productions' method of costing labour and facilities exceeds the minimum cost that is required under competitive neutrality and concluded that ABC Productions has not breached competitive neutrality principles. The CCNCO does not consider that any action is required in response to the complaint. However, it does suggest that the ABC should consider incorporating a national allowance for payroll tax in its bid to address concerns like those raised by this complaint.

The Minister for Communications, Information Technology and the Arts wrote to the Chairman of the ABC in April 2000 noting the findings of the CCNCO's investigation and asking for advice on how the ABC would address the recommendation regarding the inclusion of a national allowance for payroll tax.

The Chairman of the ABC responded in May 2000 advising that the ABC would henceforth allocate and deem a proportion of its overhead mark-up to represent notional payroll tax.

AIS Swim School

In July 1999, the Kippax Pool and Fitness Centre (KPFC) lodged a competitive neutrality complaint against AIS Swim School (AISSS). KPFC alleged that AISSS did not apply competitive neutrality principles to its operations; that it is inappropriate for the Australian Institute of Sport to replicate swim school services available in the private sector and that AISSS enjoyed a net competitive advantage by virtue of its government ownership.

The CCNCO found that the AISSS derived no significant net competitive advantage as a result of its ownership by the Commonwealth Government; employed costing and pricing practices that were consistent with, and exceeded, the requirements that would apply were

it subject to competitive neutrality; received no significant competitive advantage from its tax exempt status and had not priced its services in a way that had eliminated or substantially damaged a competitor, deterred entry or competitive conduct in the market or been inconsistent with efficient resource allocation.

The CCNCO also concluded that subjecting the AISSS to appropriate competitive neutrality arrangements would involve negligible costs while ensuring that the swim school did not gain an unreasonable competitive advantage from government ownership in the future.

The AISSS (now AIS Swim and Fitness) has been subject to competitive neutrality principles since the CCNCO's review. A full-cost pricing model was introduced following the review. This model was varied following the introduction of the GST in July 2000 and has been in place since that time.

National Rail Corporation

Two competitive neutrality complaints against National Rail Corporation (NRC) were lodged with the CCNCO during 1999-2000 by Capricorn Capital Limited on behalf of Austrac. In October 1999, Capricorn Capital alleged that NRC, as a government owned competitor being allowed to operate at a loss, has a competitive advantage as a result of government ownership and is in breach of competitive neutrality principles that call for an adequate return on capital.

The CCNCO found that NRC was in technical breach of the rate of return requirements under competitive neutrality principles as NRC had not earned a commercial rate of return (the long term bond rate plus a risk margin) for the years 1995-96 to 1998-99, however, this was not sufficient to find that NRC's performance to date has been in breach of competitive neutrality policy. The CCNCO concluded that NRC is still in an establishment phase, given the substantial restructuring and associated outlays involved in the formation of NRC. The CCNCO also noted that the rate of return projected in NRC's Corporate Plan to 2000-02 would not present a commercial return. If NRC continues to achieve this level of return in the future then this could result in further competitive neutrality complaints.

The CCNCO report proposed the option of selling a government entity when it is unable to operate commercially in the longer term. In this regard the report noted that the shareholders of NRC had announced their intention to sell the company.

Capricorn Capital lodged a second complaint with the CCNCO in February 2000 about NRC's performance for the 1999-2000 year. The CCNCO advised Capricorn Capital that it had decided not to investigate the complaint given that the sale of NRC has commenced.

On 31 January 2002, the shareholders of NRC announced that FreightCorp and NRC would be sold to National Rail Consortium.

Provision of Customs Services to Australia Post

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

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

In consultation with the Department of Communications, Information Technology and the Arts (DOCITA) and Australia Post, Customs considered ways of removing the competitive neutrality problems identified in the report.

The *Customs Legislation Amendment and Repeal (International Trade Modernisation) Act 2001* provides a modern legal framework for Customs' management of import and export cargo. The Government proposes to harmonise the value thresholds for both incoming and outgoing postal and non-postal items at the time this legislation is implemented.

The Minister for Customs has also indicated agreement in principle to the second and third recommendations. The imposition of charges on Australia Post would require legislative change to the *Customs Act 1901* and *Import Processing Charges Act 1997*. Customs is consulting with DOCITA on this matter.

2.4 Commonwealth actions to assist competitive neutrality 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 competitive neutrality principles to the wide range of Commonwealth significant business activities. The handbook is in the process of being updated and a new version is expected to be released during 2002. Copies of the 1998 version of the handbook (which contains current competitive neutrality information and advice) are available from the Commonwealth Department of the Treasury or the Treasury website (www.treasury.gov.au).

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 competitive neutrality obligations. A second paper, *Rate of Return Issues*, was released in February 1999. This paper provides general advice on establishing a

commercial rate of return on assets targets, particularly for small government business activities, and those factors the CCNCO will take into account when rate of return issues arise in a complaint. These publications are available from the CCNCO or their website (www.ccnco.gov.au).

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 competitive neutrality compliance. The publication is currently the subject of review. The 1998 publication is still current and is available from the Department of Finance and Administration or their website (www.finance.gov.au).

Agencies that applied competitive neutrality on a voluntary basis during 2000-01

Agency name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Australian Electoral Commission	Conduct of certified agreement/other ballots	Other	No	Yes	No	Yes	No	n/a	No
Australian Electoral Commission	Conduct of local government elections	Other	No	Yes	No	Yes	No	n/a	No
Bureau of Meteorology	Commercial activities	Other	No	Yes	Yes	No	No	No	No

Agencies that applied competitive neutrality during 2000-01

Agency name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Australian Broadcasting Corporation	Facilities hire	CBA	Yes	Yes	Yes	Yes	n/a	n/r	Yes
Australian Broadcasting Corporation	Retail sales	CBA	Yes	Yes	Yes	Yes	n/a	n/r	Yes
Australian Government Solicitor		GBE	Yes	n/a	n/r	Yes	n/r	Yes	No
Australian Hearing Services	Provision of hearing services through the Commonwealth Voucher Scheme and related services	CBA	Yes	Yes	Yes	Yes	Yes	n/a	No
Australian Hearing Services	Provision of hearing services to community service obligations	CBA	Yes	Yes	Yes	Yes	No	n/a	Yes

Agencies that applied competitive neutrality during 2000-01 (continued)

Agency name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Australian Industry Development Corporation	Fee Earning Guarantees	GBE	Yes	Yes	Yes	Yes	Yes	No	No
Australian Postal Corporation		GBE	Yes	n/a	Yes	Yes	n/a	No	Yes
Australian Protective Service	Protective Security Services	CBA	Yes	Yes	Yes	Yes	n/a	No	No
Australian Rail Track Corporation		GBE	Yes	n/a	n/r	Yes	n/a	n/r	No
Australian Securities & Investment Commission (including Companies & Securities Advisory Committee)	Document imaging	IH CTC	Yes	Yes	Yes	Yes	Yes	Yes	No
Australian Security Vetting Service	Security Vetting	Other	Yes	Yes	Yes	No	No	n/a	No
Australian Technology Group Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Australian Valuation Office	Valuation Services	CBA	Yes	Yes	Yes	Yes	Yes	n/a	No
Centrelink	Carelink (5 centres in WA)	Other	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Family Law Assistance Gateway call centre activity	Other	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Family Law Assistance Gateway database and website development to support call centre	Other	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Passport Call Centre	Other	Yes	Yes	Yes	Yes	n/a	n/a	No

Agencies that applied competitive neutrality during 2000-01 (continued)

Agency name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Comcare	Claims management services	CSLC	Yes	Yes	Yes	Yes	n/a	n/a	No
Comland		GBE	Yes	n/a	No	Yes	n/a	No	No
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	Research, technical and consulting services	CBA	Yes	Yes	Yes	Yes	n/a	n/a	No
ComSuper	Superannuation Administration Services	CBU	Yes	Yes	Yes	Yes	No	n/a	No
Defence Housing Authority		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Department of Industry, Science & Resources (incl Australian Government Analytical Laboratories)	Analytical laboratory services	CBU	Yes	Yes	No	Yes	Yes	Yes	Yes
Employment National Limited, Employment National (Administration) Limited		GBE	Yes	n/a	No	Yes	n/a	n/a	No
Essendon Airports	Sold in June 2001	GBE	Yes						
Export Finance and Insurance Corporation	Short-term Export Credit Insurance	CBA	Yes	Yes	Yes	Yes	n/a	Yes	Yes
Family and Community Services (includes Commonwealth Rehabilitation Service)	Commercial vocational rehabilitation services	CBU	Yes	Yes	Yes	Yes	No	Yes	No
Health Services Australia Limited		GBE	Yes	n/a	n/r	Yes	n/a	n/a	No
Medibank Private Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No

Agencies that applied competitive neutrality during 2000-01 (continued)

Agency name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Reserve Bank of Australia	Information Transfer System (Commonwealth Government Securities)	CBU	Yes	Yes	Yes	Yes	n/a	No	No
Reserve Bank of Australia	Registry	CBU	Yes	Yes	Yes	Yes	n/a	No	No
Reserve Bank of Australia	Transactional banking	CBU	Yes	Yes	Yes	Yes	n/a	n/a	No
Royal Australian Mint	Sales of numismatic coins	CBA	Yes	Yes	Yes	Yes	n/a	n/a	Yes
Snowy Mountains Hydro-electric Authority		GBE	Yes	n/a	n/a	Yes	n/a	n/a	No
Special Broadcasting Service Corporation	On air advertising and sponsorship	CBA	Yes	Yes	No	No	n/a	n/a	No
Sydney Airports Corporation Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Telstra Corporation Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/a	Yes

GBE - Government Business Enterprise
CBU - Commonwealth Business Unit
CSLC - Commonwealth Share Limited Company
CBA - Commercial Business Activity

IH CTC - In house Competitive Tendering and Contracting Unit
Other - Other Commonwealth Business Activities
n/r - No Response or Insufficient Information Received
n/a - Not Applicable

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 (CSOs) undertaken by the public monopoly and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the industry; and

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

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

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

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

During the reporting period, the 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 Australian Competition and Consumer Commission (ACCC) is responsible for administering the telecommunications competition regime in Parts XIB and XIC of the TPA.

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

The 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.

In 1997, the ACCC established a telecommunications working group to review Telstra's accounting and cost allocation arrangements, to assist the development of an enhanced accounting separation model for Telstra businesses. Draft rules were released in June 2000, with final record keeping rules coming into effect in May 2001.

The Productivity Commission conducted a review of Parts XIB and XIC of the TPA. A draft report was released in March 2001 and the final report in December 2001. The Government's response to the report is expected in the first half of 2002.

3.1.1.1 Competition in provision of USO services

The Government has had longstanding concerns about the provision of services under the Universal Service Obligation (USO) by Telstra on an uncontested basis. These concerns relate particularly to the efficiency with which the USO has been provided and the lack of consumer benefits arising from competition.

In March 2000, the Government announced two initiatives to introduce competition into the delivery of the USO:

- a contestable tender for combined obligations to provide untimed local calls and related services to customers in Telstra's 'extended zones', and to become the universal service provider in these areas; and

- two pilots for regional USO contestability schemes.

The tender for the delivery of untimed local calls in extended zones involves the allocation of $150 million to the successful tenderer to provide for the infrastructure upgrade to support the provision of untimed local calls. The successful tenderer will also be declared the universal service provider and be eligible for exclusive USO subsidies for three years. This approach reflects the view that a single service provider is still the optimal delivery model of USO services in the extended zones.

Enabling legislation for the implementation of the extended zones tender was passed in July 1999. Requests for tenders were issued on 5 October 2000 to seven companies who had previously registered an expression of interest. Telstra was announced as the preferred tenderer in February 2001 and the contracts were signed in May 2001.

The USO contestability pilots enable carriers to compete with Telstra for subsidies to provide standard telephone services that would otherwise be uncommercial. Subsidies would be allocated on a per service basis. Legislation to provide for the USO contestability pilots was passed in mid-2000. The pilots commenced on 1 July 2001 and are to be reviewed after 12 months of operation. If the contestability model is proven, contestability will become the default in the pilot areas and the model will be extended nationally.

3.1.2 Federal Airports

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

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

- environmental management;
- land use planning and development controls;
- building and construction approvals; and
- price and quality of service monitoring.

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

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

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

At the time the Government began privatising federal airports, it established a comprehensive economic regulatory framework to apply to airport lessees. The arrangements were intended to promote operation of the airports in an efficient and commercial manner, while at the same time protecting airport users from any potential abuse of market power by airport operators. These arrangements included prices monitoring and a Consumer Price Index (CPI-X) cap on aeronautical charges at Adelaide, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville airports. Prices monitoring of aeronautical related charges, transparency measures covering airport specific financial reporting, quality of service reporting and airport specific access arrangements were also part of the arrangements. When Sydney Airport was leased to the Government owned SACL, it was also subjected to prices notification and monitoring of aeronautical and

aeronautical related charges, respectively. Before privatisation, SACL was a company subject to the Commonwealth Government Business Enterprise accountability guidelines and was required to earn a fair and reasonable return on investment for its owners, the Commonwealth. Unlike the privatised airports, the Government did not place a price cap on SACL's aeronautical charges due to significant recent re-development and continued government ownership. In setting out its sale objectives for Sydney Airport, the Government announced that the ACCC would ensure that prices for regional carriers at Sydney Airport would be maintained through the sale process and would not increase in any year in excess of increases in the CPI-X.

In early October 2001, the Minister for Financial Services and Regulation signed new instruments in relation to the existing regime for price oversight at federal airports. The revised regime retained price caps in Brisbane, Melbourne and Perth airports but allowed for a once only price increase up to specified amounts. This was to allow the airport lessees to better manage the major structural adjustments taking place in the domestic aviation market. Formal monitoring of the prices, costs and profits related to the supply of aeronautical related services was retained for Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports. The Productivity Commission began a review of price regulation of airport services in December 2000 and presented its final report to Government on 25 January 2002. The purpose of this inquiry was to examine whether new regulatory arrangements were needed to ensure that the exercise of market power may be appropriately counteracted in relation to those airport services or products where airport operators are identified as having most potential to abuse market power. The Commission's recommendations include five years of price monitoring (but no price caps) at Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, and Darwin airports. The Commission recommended that alterations to such a regime only be considered after five years (at which time the regime would be independently reviewed). A second option of retaining a CPI-X price cap on a limited number of airports was also considered during the review. The Government released the report, and its response, on 13 May 2002.

The Government accepted the recommendation that Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports be subject to price monitoring for five years, to take effect from 1 July 2002. Toward

the end of the five-year period an independent review is to be carried out to ascertain the need for future airport price regulation.

The report is available at:
http://www.pc.gov.au/inquiry/airports/finalreport/index.html.
The Government's response is available at http://www.treasurer.gov.au and http://www.dotrs.gov.au.

3.1.2.1 Access arrangements for significant infrastructure facilities

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

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

3.1.3 Former Australian Wheat Board

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

The former AWB's export control powers were transferred to a new statutory Wheat Export Authority, 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. The Authority is required to review AWB (International) Ltd's performance in using the monopoly, before the end of 2004.

The review of the legislation governing these arrangements, the *Wheat Marketing Act 1989*, was completed in December 2000 and the Government response to the review recommendations was announced on 4 April 2001 (see page 30). The terms of reference for that review require an examination of relevant matters in Clause 4 of the CPA regarding structural reform of public monopolies.

4. Access to essential infrastructure

4.1 The importance of access to infrastructure

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

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

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

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

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

4.2 Part IIIA of the Trade Practices Act 1974

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

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

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

To give effect to this commitment, Part IIIA was inserted into the *Trade Practices Act* (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 a service provided by an infrastructure facility
  - A person can apply through the NCC to have a service provided by a significant infrastructure facility 'declared' by decision of the relevant Minister. Where a service is declared, access to the service may be negotiated on a commercial basis between the service provider and an access seeker.
  - If agreement cannot be reached, the terms and conditions of access can be determined by the Australian Competition and Consumer Commission (ACCC) through a legally binding arbitration process.

In making an access determination, the ACCC must take into account a range of factors, including the legitimate business interests of the service provider, the provider's investment in the facility and the public interest.

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

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

- certification of a State or Territory access regime as an 'effective regime'
  - State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Commonwealth Minister on whether or not to certify the regime as effective. On receiving a recommendation from the NCC, the Minister must decide whether the access regime is an effective regime by applying relevant principles under the CPA.
  - Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared under Part IIIA.
  - A decision on an application for certification can be reviewed by the ACT upon application within 21 days of publication of the Minister's decision.

Specific access regimes have also been established for particular infrastructure facilities. Apart from the sector-specific telecommunications access regime, the access regimes for airport services

provided at core regulated Commonwealth airports and for natural gas transmission and distribution pipelines interact with the national access regime.

The Productivity Commission conducted a legislation review of Part IIIA of the TPA, releasing a position paper in March 2001. The final report was received by the Government on 3 October 2001. The Government released its interim response and tabled the report on 17 September 2002 (see page 26).

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 during 2000-2001, and to the end of March 2002.

4.3.1 National third party access regime for natural gas pipelines

In November 1997, COAG agreed to a uniform national access regime for natural gas transmission and distributional pipelines. As part of the agreement, each State and Territory is required to seek certification that their gas access regime is effective under Part IIIA of the TPA. Applications for certification are made to the NCC, who must then make a recommendation to the responsible Commonwealth Minister after examining the application against the relevant criteria set out in the CPA and following a public consultation process.

At the time of writing, all jurisdictions — other than Tasmania — have submitted a regime for consideration by the NCC. To date, six of the seven submitted regimes have been granted certification as effective by the Commonwealth Minister, in accordance with the NCC's advice.

Details of the certification of the South Australian and Western Australian gas access regimes have been provided in previous annual reports. The progress of submissions made by remaining jurisdictions is set out below.

On 27 October 1998 *The New South Wales Third Party Access Regime for Natural Gas Pipelines* was submitted to the NCC. The NCC recommended to the Minister on 20 March 1999 that the regime be certified as effective. The Minister certified the regime as effective on 29 March 2001. (The Minister's decision in this case was delayed by the need to enact legislation addressing cross-vesting issues raised in the High Court case of *Re Wakim; ex parte McNally*.)

The Australian Capital Territory submitted its gas access regime to the NCC in January 1999. The NCC made a recommendation to the Minister in July 2000 and the Minister certified the ACT regime as effective on 25 September 2000.

The Victorian Government sought certification of its gas access regime in an application received by the NCC on 30 July 1999. The Council recommended to the Minister that the Victorian regime be certified as effective and the Minister certified the regime as effective on 29 March 2001.

The Northern Territory of Australia Third Party Access Regime for Natural Gas Pipelines was submitted to the NCC in March 2001. The NCC recommended that the regime be certified as effective in June 2001. On 4 October 2001, the Minister certified the Northern Territory gas access regime as effective.

In September 1998, the NCC received a request from the Queensland Government that the NCC recommend to the Minister that the State's access regime for gas pipeline services be certified as effective. Following a public consultation process, the NCC forwarded their recommendation to the Minister in February 2001. Subsequently, the Minister received further submissions from interested parties. The Minister then sought the NCC's advice as to whether this material raised new issues relevant to his consideration of the regime's 'effectiveness'.

In light of the time that had passed since interested parties first had an opportunity to comment on the Queensland regime, and to ensure all relevant material is reflected in its advice to the Minister, the NCC withdrew its February 2001 recommendation with a view to releasing a draft recommendation for comment. Only after the NCC has considered all of the material provided, including any comments

received on the draft recommendation which was released in February 2002, will a fresh recommendation be made to the Minister.

5. Government Business Enterprises — prices oversight

5.1 The purpose of prices oversight

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

The 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 (NCP) aims to fill this void by encouraging the establishment of independent State and Territory prices oversight bodies.

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

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

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

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

5.2 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 Australian Competition and Consumer Commission (ACCC), an independent Commonwealth authority, is responsible for administering the *Prices Surveillance Act 1983* (PSA).

The PSA enables the ACCC to undertake prices surveillance, price inquires or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the 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.

In 2000-2001, prices surveillance for Commonwealth entities was 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 increase beyond its peak price in the previous 12 months without the approval of the ACCC. The findings of the inquiry are then reported to the Minister.

The responsible Commonwealth Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, in 2000-2001 the ACCC was 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 and milk prices. The findings are also reported 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 124).

The Productivity Commission review of the PSA was completed in August 2001, and the final report presented to the Government. The report and the Government response were released on 20 August 2002 (see page 25). In line with the report's recommendations, the Government has announced that it will repeal the Act and incorporate its price restriction provisions and oversight power in the *Trade Practices Act 1974* (TPA). An objects clause will provide that prices surveillance will only be applied in markets where competitive pressures are not sufficient to achieve efficient prices and protect consumers.

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

- the NCC has then recommended that the responsible 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 during 2000-2001.

6 Conduct Code Agreement

6.1 Competitive conduct rules

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

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

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

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

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

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

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

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

The exemption provisions in sections 51(2) and 51(3) were subject to a legislation review under the CPA (see page 63).

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

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

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

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

6.2.1 Existing legislation reliant on section 51(1)

The following legislation containing exception provisions has been previously identified:

- the *Australian Postal Corporation Act 1989* (subsection 33A(6A));
- the *Wheat Marketing Legislation Amendment Act 1998*;

- the *Trade Practices Amendment (Country of Origin Representations) Act 1998*; and
- the *Year 2000 Information Disclosure Act 1999* (section 17), this Act has a sunset of 30 June 2001.

6.2.2 New legislation: exceptions made in 2000-01

There were no notifications of Commonwealth legislation made in reliance on section 51(1) in 2000-01.

7 COAG related reforms (electricity, gas, water, road transport)

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

While these commitments are largely the responsibility of the States and Territories, the Commonwealth does have some specific responsibilities (particularly in the area of gas reform). The Commonwealth 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 taken a leading role to ensure the development and implementation of electricity reforms on a national basis. To date, competition reform in the electricity sector has delivered structural reform of publicly owned utilities, competition among electricity generators, a competitive wholesale spot market for electricity (the National Electricity Market (NEM)), an efficient financial contracts market, third-party access to, and economic regulation of, network services, and customer choice for contestable large electricity consumers and all retail consumers in some jurisdictions.

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

Key developments in electricity market reform during 2000-01 and subsequently included the following:

- *Retail Contestability*. New South Wales and Victoria completed processes to develop and implement market structures and rules to support the introduction of customer choice for households and small business consumers. Both States introduced full retail contestability from January 2002. Processes have also been established to develop and implement nationally consistent structures and rules where appropriate.

- *Market Development*: The National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO) initiated several important reviews and Code change processes to promote efficient market development. Key initiatives included work to improve locational pricing signals in the NEM. The Commonwealth and jurisdictions have initiated a review to improve demand-side participation.

- *Network Development*: Several new transmission proposals and projects were advanced during the year including: the Basslink project (a 480MW non-regulated line between Tasmania and Victoria); the SNOVIC upgrade (regulated, additional 400MW between Snowy and Victoria) due for completion in late 2002; and the South Australian-NSW Interconnector (a 250 MW regulated line between NSW and South Australia). Murraylink (a 220MW non-regulated line between Victoria and South Australia) is now well into its construction phase and is due for completion in April 2002.

- *Tasmanian Entry into the NEM*: In 2001 Tasmania completed formal requirements for entry into the NEM. Physical connection and NEM participation will take place following the completion of the Basslink project, expected in 2003.

- *Efficient Electricity Financial Market:* The Commonwealth has been facilitating industry driven development of mechanisms to manage financial risk in the capital-at-risk electricity industry. The Commonwealth will continue to encourage market participants to implement a framework which encourages a liquid, deep and transparent financial market.

The Commonwealth worked with the NEM jurisdictions, NECA and NEMMCO to progress efficient market development and has participated in several working groups concerned with the policy and operational environment for the NEM. The Commonwealth also participated in the development and implementation of improved market governance arrangements.

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 market place.

In February 1994, COAG agreed to facilitate developments aimed at stimulating competition, and promoting 'free and fair trade' in the natural gas sector. These commitments were integrated into the National Competition Policy (NCP) reforms.

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;
- remove a number of restrictions on interstate trade; and
- develop a nationally integrated competitive natural gas market by:
  - establishing a national regulatory framework for third party access to natural gas pipelines; and
  - facilitating the inter-connection of pipeline systems.

Governments and industry, through the Gas Reform Implementation Group (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 Regime

Legislation giving effect to the national Third Party Access Code for Natural Gas Pipelines (the Code) is now operating in all jurisdictions.

The National Competition Council (NCC) has given in-principle approval that the national regime is an 'effective' access regime for the purposes of Part IIIA of the *Trade Practices Act 1974*. Each jurisdiction is required to have its regime certified by the NCC. As at 30 June 2001, the Commonwealth Minister had certified the regimes of all jurisdictions, except Queensland and the Northern Territory. The Northern Territory's regime was certified in October 2001.

The *Jurisdiction of Courts Legislation Amendment Act 1999*, which responded to the High Court's *Wakim* decision of 17 June 1999, included amendments to the *Gas Pipelines Access (Commonwealth) Act 1998*. The Act passed through Federal Parliament on 10 May 2000 and came into force on 1 July 2000. Other jurisdictions have made complementary amendments to their gas access legislation.

7.2.2 Code changes

The Natural Gas Pipelines Access Agreement established the National Gas Pipelines Advisory Committee (NGPAC) to monitor and review the operation of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) and make recommendations to Ministers on

changes to the Code. The Commonwealth, through the Department of Industry, Tourism and Resources is represented on NGPAC.

During 2000-01, NGPAC recommended ten Code change proposals to Ministers for approval. It subsequently withdrew for further consideration one significant proposed Code change relating to the possibility that a gas pipeline could be covered by two regulatory regimes. The nine Code change proposals approved by Ministers over this period comprise six significant and three non-significant amendments.

As required by the Code, NGPAC prepared an information memorandum and undertook public consultation for the significant proposed Code changes. NGPAC then considered the submissions received before making recommendations to Ministers.

Each of the Code changes approved by Ministers is briefly described below:

- clarification of when an access arrangement may be accepted by a regulator;
- expansion of the definition of a service provider to include foreign companies;
- identification of the factors that may be considered by the relevant regulator in determining whether to waive ring-fencing obligations;
- obligation on a service providers to disclose certain confidential end user information to an end user of prospective retailers when requested by the end user;
- allowing the use of incentive mechanisms across more than one regulatory period;
- specification of the ways in which a reference tariff may be varied within a regulatory period;
- clarification of terms in relation to proposed pipelines to confirm that a pipeline that has not yet been built may be the subject of an access

arrangement and may be covered by the Code. It also removes the redundant definition of 'Prospective Service Provider';

- removal of the mandatory requirements for an access arrangement for distribution pipelines to include a queuing policy; and
- removal of the mandatory requirements for service providers of distribution pipelines to maintain a register of spare capacity.

7.2.3 Retail reform

Jurisdictions and industry continued to develop market-operating arrangements for the implementation of full retail contestability in gas. The States and Territories have indicated that they are working to implement metering, settlement and transfer systems for gas customers, with the aim to make these systems as compatible as possible between gas and electricity and between jurisdictions.

7.2.4 Gas Policy Forum

The Gas Policy Forum (the Forum) was established by the Commonwealth to provide an avenue for consensus at a national level on important gas policy issues. All jurisdictions, all relevant gas industry associations, the Electricity Supply Association of Australia, the NCC and the Australian Competition and Consumer Commission (ACCC) participate in the Forum. The Forum reports through the Energy Markets Group, to COAG Senior Officials. The Commonwealth, through the Department of Industry, Tourism and Resources, provides the secretariat for the Forum.

The Forum was established to address high level gas policy issues and set out measures to address outstanding reforms in the gas market and deliver outcomes consistent with the Government's energy and environmental objectives.

The first meeting of the Forum, held on 23 May 2000, agreed to address four priority issues in the work program for 2000-01 — retail contestability in the gas market, regulation and access arrangements, competition in the upstream sector and convergence of gas and

electricity into a national energy market. The Forum convened a number of workshops in 2000-01 to progress consideration of the priority issues and produced a paper on key issues for gas reform for the consideration of the COAG Ministerial Council on Energy.

7.2.5 Access arrangements

Under the Code, pipeline operators are required to submit an 'Access Arrangement' to the relevant regulator for approval. An Access Arrangement specifies the maximum tariff that can be charged for transporting gas along a pipeline. Such reference tariffs are determined by the regulator, based on the initial capital base of the pipeline infrastructure and other parameters, following a public consultation process.

During 2000-01, the ACCC released a final decision on the Access Arrangement for the Marsden to Dubbo (Central West) transmission pipeline. In NSW, the Independent Pricing and Regulatory Tribunal (IPART) issued final decisions on the Access Arrangements for the AGL distribution network. In Western Australia, the Office of Gas Access Regulation (OffGAR) issued the final decision on the Access Arrangement for the Parmelia transmission pipeline.

In addition, the South Australian regulator issued a draft decision for Epic Energy's Moomba to Adelaide pipeline and the Western Australian regulator released a draft decision for the Tubridgi Pipeline System, the Goldfields and Dampier to Bunbury gas pipelines.

Throughout the year, a number of new access arrangements were submitted to relevant regulators for assessment.

7.3 Water

Water reform is a key national priority in the management of natural resources. Water is a critical element for life and its sustainable use is inextricably linked to the protection of water quality and environmental processes.

Australia's water reform initiatives have been formulated against the background of considerable concern about the state of the nation's water resources and a recognition that an important part of the solution relies on significant policy and institutional change.

The Commonwealth and all State and Territory Governments are party to the 1994 COAG Agreement on a Strategic Framework for Water Reform. Jurisdictional progress with implementation of these reforms is assessed by the NCC for eligibility for competition payments under NCP.

The COAG framework draws on the early reform experience and provides new strategic focus to reform through an integrated package of measures. A feature of the framework is that it explicitly links economic and environmental objectives and seeks to improve both the efficiency of water use and the sustainable management of the nation's river systems.

The framework's main elements include a range of interlinked market based measures involving pricing water for full cost recovery, establishing secure property rights for water separate from land rights and providing for permanent trading in water entitlements. It includes specific provision of water for the environment, water service providers to operate on the basis of commercial principles and improved public consultation and education arrangements.

Progress in implementing the reforms has varied amongst jurisdictions and there is a need to maintain the reform momentum, particularly with respect to the establishment of clear property rights and the provision of water for the environment. The NCC's June 2001 third tranche assessment of jurisdictions' progress with implementing NCP noted that while significant progress had been made, further work was needed, particularly in terms of water property rights and environmental flows.

The formation of the Natural Resource Management Ministerial Council has given further emphasis to the reform process, as the Council reaffirmed its commitment to the reforms at its first meeting. This Ministerial Council assumed the natural resource management responsibilities of, *inter alia*, ARMCANZ and the Australian and New Zealand Environment and Conservation Council (ANZECC).

As in previous years, the Secretary of the Department of Agriculture, Fisheries and Forestry Australia (AFFA) chaired the High Level Steering Group on Water (HLSGW). This group, comprising CEOs of several State departments and a representative of the Water Services Association of Australia, was formed in late 1998 to maintain the impetus of the reform process. The group was jointly managed by ARMCANZ and ANZECC until the final meeting in May 2001. The HLSGW was dissolved in recognition that its role of facilitating the completion of the COAG water reforms has largely been completed and that new structures were emerging from the Natural Resource Management Ministerial Council that would more effectively fulfil the role of the group.

The HLSGW identified issues of particular concern across jurisdictions, particularly in relation to the COAG water reforms and set up time-limited working groups to address those matters. The group also provides a forum for high-level discussions of key water resource management issues. A number of documents on topics such as water trading, externalities of water use and water for the environment, were released for public consultation in 2000-01. The HLSGW produced an annual report to COAG on the progress by States and Territories in implementing the reform agenda.

Between April and June 2001, an AFFA officer was seconded to the NCC to provide assistance in the preparation of the June 2001 third tranche assessment of progress in implementing the COAG water reforms, particularly material relating to water trade and pricing. AFFA and Australian Bureau of Agriculture and Resource Economics (ABARE) staff worked with the NCC to prepare a discussion paper on water property rights. This paper was published by the NCC and formed part of the assessment framework for the third tranche assessment of water reform.

7.4 Road transport

The national approach to road transport reform commenced in 1991 when COAG signed the Heavy Vehicles Agreement and was extended in 1992 with the Light Vehicles Agreement. These agreements were given effect by the Commonwealth *National Road Transport Commission Act 1991*, which established the National Road Transport Commission

(NRTC) to oversee development and implementation of the reform program under the direction of a Ministerial Council.

In April 1995, road transport reform was integrated into the NCP process, in recognition that full implementation would boost national welfare and reduce the cost of road transport services. This involved all governments committing to the effective observance of agreed road transport reforms.

The NRTC was initially to develop the reforms progressively through six separate modules:

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

Governments were to phase in national reforms using 'template' legislation. This involved the Commonwealth enacting legislation (Commonwealth Road Transport Legislation) to apply the agreed reforms in the ACT, with other States and Territories applying the Commonwealth template 'by reference' in their own jurisdictions.

However, in February 1997, the Ministerial Council 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. This principle was included in *First Heavy and Light Vehicles Amending Agreements* which were scheduled to the *National Road Transport Commission Amendment Act 1998* and ratified in September 1999. These Amending Agreements preserved the concept of

Commonwealth road transport legislation, but allowed jurisdictions the flexibility to implement the legislation either by reference or by enacting its substance.

To also allow more timely implementation of reforms, the six initial reform modules were broken into eleven parts. Additionally, the Australian Transport Council (ATC) agreed two ten point 'fast track' packages of reform in 1994 and 1997 known as the First and Second Heavy Vehicle Reform Packages. These reforms, taken together, form the original NRTC reform agenda of 31 reforms.

One reform, Heavy Vehicle Charges, was assessed under the first tranche in 1997, while 19 reforms were assessed in 1999.

Throughout 1999-2000 a working group, the Standing Committee on Transport, developed a framework for the third tranche assessment including consulting industry. The ATC and COAG agreed on the framework and it was provided to the NCC to serve as the basis for its June 2001 third tranche assessment of road transport reforms. Six reforms were included in this assessment framework. Only one of these reforms, a second-generation of Heavy Vehicle Charges, was relevant to the Commonwealth, and it was implemented on 1 July 2001.

Of the 19 reforms in the second tranche assessment framework, the Commonwealth was required to implement nine in relation to heavy vehicles registered in the Federal Interstate Registration Scheme (FIRS). Most of these were implemented previously. However, some aspects of one reform relating to heavy vehicle registration have been delayed pending the broader review of the FIRS. This is the only outstanding item on the Commonwealth's agenda.

Commonwealth Legislation Review Schedule (as at 1 April 2002) — by scheduled commencement date

Table A1: Commonwealth legislation review schedule

Name of legislation	Responsible department
Underway in 1996	
Aboriginal and Torres Strait Islander Heritage Protection Act 1984	Environment and Heritage
Bounty (Books) Act 1986	Industry, Tourism and Resources
Bounty (Fuel Ethanol) Act 1994	Industry, Tourism and Resources
Bounty (Machine Tools & Robots) Act 1985	Industry, Tourism and Resources
Census & Statistics Act 1905	Treasury
Commerce (Imports) Regulations, Customs Prohibited Imports Regulations and *Commerce (Trade Descriptions) Act 1905*	Attorney-General's
Corporations Act 1989	Treasury
Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991	Education, Science and Training
Financial system — comprehensive review of the regulatory framework	Treasury
Industrial Relations Act 1988	Employment and Workplace Relations
Patents Act 1990, sections 198-202 (Patent Attorney registration)	Industry, Tourism and Resources
Protection of Movable Cultural Heritage Act 1986	Communications, Information Technology and the Arts
Quarantine Act 1908	Agriculture, Fisheries and Forestry

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
Aboriginal Land Rights (Northern Territory) Act 1976	Immigration and Multicultural and Indigenous Affairs
Australian Maritime Safety Authority Act 1990	Transport and Regional Services
Australian Postal Corporation Act 1989	Communications, Information Technology and the Arts
Bills of Exchange Act 1909	Treasury
Customs Tariff Act 1995 — Automotive Industry Arrangements	Industry, Tourism and Resources
Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements	Industry, Tourism and Resources
Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995,* Schedule 4, Item 21, Treatment Code 421	Attorney-General's
Foreign Investment Policy, including associated regulation	Treasury
Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976	Agriculture, Fisheries and Forestry
International Arbitration Act 1974	Attorney-General's
Migration Act 1958 — sub-classes 120 and 121 (business visas)	Immigration and Multicultural and Indigenous Affairs
Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)	Immigration and Multicultural and Indigenous Affairs
Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations	Immigration and Multicultural and Indigenous Affairs
Migration Agents Registration (Application) Levy Act 1992 and *Migration Agents Registration (Renewal) Levy Act 1992*	Immigration and Multicultural and Indigenous Affairs
National Road Transport Commission Act 1991 and related Acts	Transport and Regional Services
Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and regulations	Foreign Affairs and Trade
Pooled Development Funds Act 1992	Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
Quarantine Act 1908, in relation to human quarantine	Health and Ageing
Radiocommunications Act 1992 and related Acts	Communications, Information Technology and the Arts
Rural Adjustment Act 1992 and States and Northern Territory Grants (Rural Adjustment) Acts	Agriculture, Fisheries and Forestry
Shipping Registration Act 1981	Transport and Regional Services
Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations	Treasury
Tradesmen's Rights Regulation Act 1946	Employment and Workplace Relations
1997-98	
Affirmative Action (Equal Employment Opportunity for Women) Act 1986	Employment and Workplace Relations
Agricultural and Veterinary Chemicals Act 1994	Agriculture, Fisheries and Forestry
Bankruptcy Act 1966 and Bankruptcy Rules — trustee registration provisions	Attorney-General's
Customs Act 1901 Sections 154-161L	Attorney-General's
Defence Housing Authority Act 1987	Defence
Environmental Protection (Nuclear Codes) Act 1978	Health and Ageing
Higher Education Funding Act 1988 plus include: Vocational Education & Training Funding Act 1992 and any other regulation with similar effects to the *Higher Education Funding Act 1988*	Education, Science and Training
Imported Food Control Act 1992 and regulations	Agriculture, Fisheries and Forestry
International Air Services Commission Act 1992 and International Air Service Agreements	Transport and Regional Services
Motor Vehicle Standards Act 1989	Transport and Regional Services
Mutual Recognition Act 1992	Education, Science and Training and Prime Minister and Cabinet
National Health Act 1953 (Part 6 & Schedule 1) and *Health Insurance Act 1973 (Part 3)*	Health and Ageing

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1997-98	
National Residue Survey Administration Act 1992 and *related Acts*	Agriculture, Fisheries and Forestry
Petroleum Retail Marketing Franchise Act 1980	Industry, Tourism and Resources
Petroleum Retail Marketing Sites Act 1980	Industry, Tourism and Resources
Pig Industry Act 1986 and related Acts	Agriculture, Fisheries and Forestry
Primary Industries Levies Acts and related Collection Acts	Agriculture, Fisheries and Forestry
Torres Strait Fisheries Act 1984 and related Acts	Agriculture, Fisheries and Forestry
Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations	Treasury
Trade Practices Act 1974 (s 51(2) and s 51(3) exemption provisions)	Treasury
1998-99	
Anti-dumping legislation*, Customs Act 1901 Pt XVB* and *Customs Tariff (Anti-dumping) Act 1975*	Attorney-General's
Australia New Zealand Food Authority Act 1991 Food Standards Code	Health and Ageing
Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964	Communications, Information Technology and the Arts
Defence Force (Home Loans Assistance) Act 1990	Defence
Export Control Act 1982 (fish, grains, dairy, processed foods etc)	Agriculture, Fisheries and Forestry
Financial Transactions Reports Act 1988 and regulations	Attorney-General's
Fisheries Legislation	Agriculture, Fisheries and Forestry
Health Insurance Act 1973 — Part IIA	Health and Ageing
Intellectual property protection legislation *(Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968* and possibly *the Circuit Layouts Act 1989)*	Attorney-General's and Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1998-99	
Land Acquisition Acts: *a) Land Acquisition Act 1989* and regulations*; b) Land Acquisitions (Defence) Act 1968; c) Land Acquisition (Northern Territory Pastoral Leases) Act 1981*	Finance and Administration
Marine Insurance Act 1909	Attorney-General's
Navigation Act 1912	Transport and Regional Services
Proceeds of Crime Act 1987 and regulations	Attorney-General's
Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts
Trade Practices *Act 1974* — Part X (shipping lines)	Transport and Regional Services
Veterans' Entitlement Act 1986 — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)	Veterans' Affairs
1999-00	
Dairy Industry Legislation	Agriculture, Fisheries and Forestry
Defence Act 1903 (Army and Airforce Canteen Services Regulations)	Defence
Disability Discrimination Act 1992	Attorney-General's
Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
Export Control Act 1982 — Export Control (Unprocessed Wood) Regulations	Agriculture, Fisheries and Forestry
Export Finance & Insurance Corporation Act 1991 and *Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*	Foreign Affairs and Trade
Hazardous Waste (Regulation of Exports and Imports) Act 1989, Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995 and related regulations	Environment and Heritage
Insurance (Agents & Brokers) Act 1984	Treasury
Native Title Act 1993 and regulations	Prime Minister and Cabinet
Ozone Protection Act 1989 and *Ozone Protection (Amendment) Act 1995*	Environment and Heritage
Petroleum (Submerged Lands) Act 1967	Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1999-00	
Prices Surveillance Act 1983	Treasury
Superannuation Acts including: *Superannuation (Self Managed Superannuation Funds) Taxation Act 1987*, *Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991*, *Superannuation (Resolution of Complaints) Act 1993*, *Superannuation Industry (Supervision) Act 1993*, *Occupational Superannuation Standards Regulations Applications Act 1992*, *Superannuation (Financial Assistance Funding) Levy Act 1993*	Treasury
Trade Practices Act 1994 (including exemptions) — Part IIIA (access regime)	Treasury
Trade Practices Act 1974 — 2D exemptions (local government activities)	Treasury
Trade Practices Act 1974 — fees charged	Treasury
Wheat Marketing Act 1989	Agriculture, Fisheries and Forestry

Legislation review terms of reference

Commerce (Imports) Regulations and *Commerce (Trade Descriptions) Act 1905*

1. *The Commerce (Trade Descriptions) Act 1905*, and associated regulations, (collectively, the legislation) are referred to a committee of officials for evaluation and report by 28 February 2002. The committee of officials is to focus on those parts of the legislation that restrict competition, or 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:

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

   (d) Australian compliance with obligations flowing from membership of the World Trade Organisation or any other international treaties that relate to the subject matter referred to in (1); and

(e) promote consistency between regulatory regimes and efficient regulation through the removal of unnecessary duplication.

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 legislation seeks to address;

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

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

(d) examine the relationship between the requirements of the legislation and other requirements for labelling of goods for domestic sale;

(e) identify alternatives to the legislation, including non-legislative approaches, analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and any alternatives;

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

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

(h) 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; and

(i) recommend a preferred course of action, in light of objectives set out in (2).

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.

   Within four 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 for Justice and Customs and where appropriate, after consideration by Cabinet.

National Road Transport Commission Act 1991

Section 46(1) of the National Road Transport Commission Act 1991 (NRTCA) states that 'This Act ceases to be in force at the end of 12 years after its commencement.' The NRTCA was commenced on 15 January 1992. Therefore the sunset of the NRTCA takes effect on 14 January 2004.

Section 47 of the NRTCA states:

'(1) At least 12 months before this Act is due to cease to be in force because of subsection 46(1), the Australian Transport Council must:

(a) prepare a written report that contains a recommendation in accordance with subsection (2) and that sets out the Council's reasons for making that recommendation; and

(b) give a copy of the report to the head of government of each of the parties to an agreement.

(2) The report must contain either:

(a) a recommendation that this Act should cease to be in force under subsection 46(1) and should not be re-enacted; or

(b) a recommendation that this Act should continue to be in force, or should be re-enacted, for a further period not exceeding 6 years, subject to the making of such modifications (if any) as are set out in the report.'

In the context of developing the required report (called for convenience the NRTC Act Review), the Australian Transport Council (ATC) is committed to continuing transport reform and innovation with the aim of achieving:

- improvements in transport industry efficiency and productivity
- improvements in transport safety
- minimisation of the adverse environmental impacts of transport.

To achieve these ends, the ATC wishes to put in place regulatory regimes and institutional arrangements which:

- encourage and facilitate innovation in the transport industry and its regulation
- improve the efficiency and effectiveness of implementation of and compliance with regulatory frameworks
- facilitate effective cross - modal transport arrangements
- have regard to the impacts of transport and transport reform upon infrastructure provision and maintenance and upon rural and remote areas.

Terms of Reference

1. In this context the NRTCA Review should:

   (a) Consider and report on how well the NRTCA and associated processes have functioned and on any ways in which those processes might be significantly improved, including how the preparation of regulatory impact statements might be improved;

   (b) Make recommendations on whether the NRTCA should cease to be in force (and if so what alternative structures should be put in place) or be re-enacted (including in a modified form). If the latter, the recommendations should include any revisions or clarifications that need to be made to

the NRTC Act and the Heavy and Light Vehicle Agreements, to make them function more effectively;

(c) Having regard to the broad aims set out earlier in these terms of reference, consider the breadth of, and priorities for, future road transport reform needs including consideration of alternative approaches to regulatory arrangements (for example, accreditation and co-regulation):

- the issues considered in any future regulatory reform arrangements should include pricing, charges, cost neutrality and the externalities associated with choices of transport mode;

(d) In addressing future institutional arrangements for transport regulatory reform, explicitly consider whether those arrangements should apply only to road transport or be extended to any aspects of other modes and to cross-modal issues;

(a) Consider also the degree to which any change in institutional arrangements should encompass issues beyond regulatory reform. In this context the review should also address the role of the National Transport Secretariat and its place in any recommended future institutional arrangements;

(b) If recommendations are made to broaden the current regulatory policy framework (for example by replacing the NRTC by a Land Transport Commission) the review should specifically address what steps and arrangements are necessary in order to ensure that this does not result in a lessening of attention to ongoing road transport reform. This should include, but not be limited to, how best to:

- ensure that previous reforms are kept up to date and maintain their relevance in a changing economy and transport environment;

- complete work on outstanding reforms; and

- develop a new agenda for reform and implementing change projects;

(c) Consider an appropriate level of funding for the recommended institutional arrangements and the ongoing funding arrangements that should apply.

2. The review may also make recommendations to address any other limitations or shortfalls identified in the course of the review.

Prices Surveillance Act 1983

Terms of Reference

PRODUCTIVITY COMMISSION ACT 1998

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby refer the *Prices Surveillance Act 1983* to the Commission for inquiry and report within nine months of receipt of this reference. The Commission is to focus on those parts of the legislation that restrict competition, or which impose costs or confer benefits on business. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. The *Prices Surveillance Act 1983* (the PSA) provides for the surveillance of, and the holding of inquiries into prices charged, or proposed to be charged, for the supply of certain goods and services in Australia.

Scope of Inquiry

3. The Commission is to report on the appropriate arrangements, if any, for prices surveillance, taking into account the following:

   - legislation/regulation that 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 be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;

- where relevant, 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;

- the need to ensure that regulation achieves its objectives, using the most appropriate means;

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

- compliance costs and the paper work burden on business should be reduced where feasible, particularly for small business; and

- the potential for increasing competition in those markets to which the provisions of the PSA have been applied.

4. In making assessments in relation to the matters in (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:

   - identify the nature and magnitude of the problem(s) that the PSA seeks to address;

   - clarify the objectives of the PSA;

   - identify whether, and to what extent, the PSA restricts competition;

   - consider alternative means (including non-legislative approaches) of achieving the objectives of the PSA, including changes to the operation of existing price oversight arrangements and alternatives to prices oversight;

- analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the PSA and alternatives identified in (d);
- identify the different groups likely to be affected by the PSA and alternatives;
- list the individuals and groups consulted during the review and outline their views;
- determine a preferred option for regulation, if any, in light of objectives set out in (3); and
- examine mechanisms for increasing the overall efficiency (including minimising the compliance costs and paper burden on small business) of the PSA and, where it differs, the preferred option.

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

6. The Government will consider the Commission's recommendations, and the Government's response will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP

Shipping Registration Act 1981

Terms of Reference

The *Shipping Registration Act 1981* (SR Act) came into effect on 26 January 1982 and provides for the registration of ships in Australia. The SR Act is 'an Act for the registration of ships in Australia, and for related matters' and replaced the previous system of ship registration under which Australian owned ships were registered as British ships under the United Kingdom *Merchant Shipping Act 1984* (MSA). The SR Act adopted

the MSA approach which specifically addressed the needs of large commercial vessels.

A review of the SR Act will be undertaken in accordance with the requirements of the national competition policy agreed between the Commonwealth and State and Territory Governments. The purpose of the review is to assess the performance of the Act in meeting its objectives, focussing particularly on any restriction on competition, and also to report on appropriate arrangements for national registration of ships in the future.

A task force of seconded officials from the Department of Transport and Regional Development, the Australian Maritime Safety Authority (AMSA) and the Bureau of Transport and Communications Economics will undertake the review. A steering committee, comprised of a senior executive from both the Department and AMSA, has been established to oversight the review. An independent reference committee has also been established to act as an external referee of the conduct of the review.

1. The Task Force is to:

   (a) identify the objectives of the SR Act and assess the appropriateness of these objectives;

   (b) assess the effectiveness of the SR Act against the objectives identified in (a); and

   (c) assess the efficiency of the SR Act.

2. In assessing the matters in (1), the task force is to have regard to:

   (a) Australia's rights and duties as a flag State under the United Nations Convention on the Law of the Sea; and

   (b) The effects on the environment (including the link between ship registration, safety certification and environmental protection), welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation.

3. In light of findings under (1) and (2) above, investigate and report on appropriate future arrangements for national registration of ships taking into account:

   (a) the benefits and costs to the community of current arrangements, including compliance costs and the paperwork burden on business, particularly small business;

   (b) whether the objectives of the legislation cannot be achieved more efficiently or with greater net community benefits through other means, including non-legislative approaches; and

   (c) currently, or potentially, available means for registering an interest in vessels.

   (d) In making assessments in relation to the matters in (2), 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 task force should:

   (e) identify the nature and magnitude of the social and economic issues which the SR Act seeks to address;

   (f) assess whether, in meeting its objectives, the SR Act restricts competition and, as far as practical, identify the nature, extent and effects of any such restrictions on business and on the community generally;

   (g) detail any further effects of the SR Act on business beyond any restrictions on competition identified in (b);

   (h) identify any appropriate alternative registration regimes to the current SR Act, including mutual recognition and other cooperative arrangements with State agencies, particularly for recreational vessels, and other non-legislative approaches;

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

(j) determine a preferred option for regulation, if any, in light of objectives set out in (1) and (2); and

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

(l) In undertaking the review, advertise nationally the fact of the review, seek submissions, identify the interested parties likely to be affected by the SR Act and alternative approaches to ship registration, consult with key interest groups and affected parties and include in the report a list and outline of the views from his consultation and submission process.

(m) Report by 30 September 1997 and ensure that within 2 weeks of the report being finalised, it is forwarded to the Minister for Transport and Regional Development with a recommendation that a copy be sent to the Treasurer.

Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority)

PRODUCTIVITY COMMISSION ACT 1998

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby refer the attached list of legislation and associated regulations, relating to spectrum management processes which are provided for under radiocommunications and other legislation, to the Commission for inquiry and report within 12 months of receipt of this reference. The Commission is to focus on those parts of the legislation that restrict competition, or that impose costs or confer benefits on business. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. This review fulfils a commitment made in the Commonwealth Legislation Review Schedule to undertake National Competition

Policy reviews of the *Radiocommunications Act 1992* (the Act) and related Acts and of the market based reforms and activities undertaken by the Australian Communications Authority (ACA) (formerly Spectrum Management Authority).

Scope of Inquiry

3. The Commission is to report on appropriate arrangements for spectrum management 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 be achieved only 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) there should be explicit assessment of the suitability and impact of any standards made under the legislation and any standards referenced in the legislation, and justification of their retention if they are to remain; and

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

4. In making assessments in relation to the matters in (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 nature and magnitude of the social, environmental or other economic problem(s) 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 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 legislation, if any, in light of the objectives set out in 3 above; 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.

5. The Commission should also report on:

(a) how effective the reforms introduced in the legislation have been in:

(i) removing structural obstacles to the introduction of new communications technologies and services;

(ii) encouraging innovation and investment in radiocommunications services; and

(iii) facilitating access to spectrum by users, including public and community services as defined in the legislation;

(b) the effectiveness of provisions in the Radiocommunications Act 1992 as a way by which to control market domination and increase competition; and

(c) the effectiveness of the ACA's implementation of the reforms introduced in the legislation;

and in doing so have regard to international arrangements for spectrum planning and development of standards (including the implications of these on the availability of radiocommunications equipment).

6. The Commission should take account of any recent substantive studies relevant to the inquiry.

7. In undertaking the review, the Commission is to advertise nationally and consult with key interest groups and affected parties.

8. The Government will consider the Commission's recommendations, and the Government's response will be announced as soon as possible after the receipt of the Commission's report.

Schedule

The following Acts and their associated Regulations are to be reviewed

Radiocommunications Act 1992

Australian Communications Authority Act 1997

Radiocommunications (Transmitter Licence Tax) Act 1983

Radiocommunications (Receiver Licence Tax) Act 1983

Radiocommunications (Spectrum Licence Tax) Act 1997

Radiocommunications (Permit Tax) Act 1983

Radiocommunications Taxes Collection Act 1983

Superannuation Acts including:

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

Terms of Reference

PRODUCTIVITY COMMISSION ACT 1998

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, hereby refer the attached list of legislation and associated regulations, relating to superannuation, to the Commission for inquiry and report within 9 months of receipt of this reference. The Commission is to focus on those parts of the legislation that restrict competition, or that impose costs or confer benefits on business. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. This review fulfils a commitment made in the Commonwealth Legislation Review Schedule to undertake National Competition Policy reviews of these Acts. This review will not be addressing taxation issues affecting the superannuation industry, other than levies referred to in the attached Schedule.

Scope of Inquiry

3. The Commission is to report on appropriate arrangements for regulation 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 be achieved only 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) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards; and

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

4. In making assessments in relation to the matters in (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 nature and magnitude of the social, environmental or other economic problem(s) 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 legislation and alternatives identified in (d);

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

(g) determine a preferred option for regulation, if any, in light of objectives set out in 3; and

(h) 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.

5. The Commission should take account of any recent substantive studies relevant to the inquiry.

6. In undertaking the review, the Commission is to advertise nationally and consult with key interest groups and affected parties.

7. The Government will consider the Commission's recommendations, and the Government's response will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP

Trade Practices Act 1974 - Section 2D

Terms of Reference

PRODUCTIVITY COMMISSION ACT 1998

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the *Productivity Commission Act 1998*, and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer section 2D of the *Trade Practices Act 1974* to the Commission for inquiry and report within twelve months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. Section 2D of the *Trade Practices Act 1974* (TPA) exempts the licensing decisions and internal transactions of local government bodies from Part IV of the TPA. Part IV of the TPA regulates restrictive trade practices.

Scope of Inquiry

3. The Commission 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 be achieved only 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; employment, social welfare, access and equity; occupational health and safety; economic and regional development; consumer interests; the competitiveness of business including small business; and efficient resource allocation; and to identifying the likely impact of reform measures on specific industry sectors and

communities, including expected costs in adjusting to change.;

c. the need to promote consistency between and within regulatory regimes and efficient regulatory administration, through improved coordination to eliminate unnecessary duplication. Particular attention is to be paid to the need for the consistent regulation of the licensing decisions and internal transactions of the Commonwealth, the States and Territories, and local government bodies; and

d. compliance costs and the paperwork burden on small business should be reduced where feasible.

4. In making assessments in relation to the matters in (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 nature and magnitude of the social, environmental or economic problem(s) that the exemption seeks to address;

(b) clarify the objectives of the exemption;

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

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

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the exemption and alternatives identified in (d). Consideration should be given to the compliance costs and paper burden on small business of the exemption and alternatives;

(f) identify the different groups likely to be affected by the exemption and alternatives.

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

(h) determine a preferred option for regulation, if any, in light of objectives set out in (3).

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

6. The Government will consider the Commission's recommendations, and will consult with States and Territories prior to making its response, which will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP