Commonwealth National Competition Policy

Annual Report

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Contents

Abbreviations

ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
ADC	Australian Dairy Corporation
AFF	Department of Agriculture, Fisheries and Forestry
AHMAC	Australian Health Ministers' Advisory Council
AHMC	Australian Health Ministers' Conference
AMSA	Australian Maritime Safety Authority
ANTA	Australian National Training Authority
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
AWB	Australian Wheat Board
AWBI	AWB (International) Limited
CAC Act	*Commonwealth Authorities and Companies Act 1997*
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
CEOGW	Chief Executive Officer's Group on Water
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
DHA	Defence Housing Authority
DOTARS	Department of Transport and Regional Services
EAL	Essendon Airport Limited
EFIC	Export Finance and Insurance Corporation
FAGs	Financial Assistance Grants
FBT	Fringe Benefits Tax
FIRS	Federal Interstate Registration Scheme
FMA Act	*Financial Management and Accountability Act 1997*
FRC	Full retail contestability
FSANZ	Food Standards Australia and New Zealand
FTR Act	*Financial Transaction Reports Act 1988*
GBE	Government Business Enterprise
GDP	Gross Domestic Product
GST	Goods and Services Tax
HAL	Horticulture Australia Limited
IDC	Interdepartmental Committee
ITSA	Insolvency and Trustee Service Australia
LSAA	Legal Services Association Australia

LVS	Low Volume Scheme
MCE	Ministerial Council on Energy
MRA	Mutual Recognition Agreement
MHA	Member of the House of Assembly
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
NRS	National Residue Survey
NRTC	National Road Transport Commission
ODS	Ozone depleting substances
OECD	Organisation for Economic Co-operation and Development
ORR	Office of Regulation Review
PBS	Pharmaceutical Benefits Scheme
PIMC	Primary Industries Ministerial Council
PISC	Primary Industries Standing Committee
PSA	*Prices Surveillance Act 1983*
PZJA	Protected Zone Joint Authority
RAWS	Registered Automotive Workshop Scheme
RFA	Regional Forest Agreement
RIS	Regulation Impact Statement
RTI	Regional Telecommunications Inquiry
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
TPA	*Trade Practices Act 1974*
TTMRA	Trans-Tasman Mutual Recognition Agreement
USO	Universal Service Obligation
WEA	Wheat Export Authority
WTO	World Trade Organisation
VET	Vocational Education and Training
WMA	*Wheat Marketing Act 1989*

Introduction

The importance of competition policy for Australia

The performance of the Australian economy over the past decade has been exceptional by both historical and international standards. Economic expansion over that period has been longer and steadier than any period since the 1960s, which, together with a stable macroeconomic framework, has resulted in significant reductions in unemployment while providing a low inflation rate. Moreover, Australia has outperformed most of its peers in the Organisation for Economic Co-operation and Development (OECD) and has been 'notably resilient to shocks, both internal and external'.[1] In the period 1990 to 2001, Australia's average annual growth in real Gross Domestic Product (GDP) per capita of 2.5 per cent exceeded the OECD average of 1.5 per cent and the United States average of 2 per cent.

The strong performance of the Australian economy has been underpinned by acceleration in productivity growth. Multifactor productivity increased at an average annual rate of 1.8 per cent per annum during the second half of the 1990s, compared to 0.7 per cent per annum in the early 1990s and 1.2 per cent per annum in the second half of the 1960s. These gains are the result of the development and, more importantly, adoption of new technology and innovations, better organisation of production within firms, more efficient resource allocation across industries and improved international competitiveness. Growth and export competitiveness, in the future, will depend on a continued favourable productivity performance.

Before the structural reforms of the 1980s and 1990s, the Australian economy was characterised by highly regulated product, capital and labour markets, which did not have the flexibility and incentives to adjust to changes in the domestic and international environment.

Competition reforms have contributed to Australia's strong economic performance. Reforms have reduced barriers to market entry and exit,

1 OECD Economic Survey of Australia 2003, page 9.

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 in some sectors and under-investment in others, poor service delivery and inefficient pricing.

Reforms introduced under the National Competition Policy (NCP) framework continue to benefit the economy, with the Productivity Commission estimating that these reforms have the potential to increase GDP by 2.5 per cent above what would occur in the absence of such reforms.[2] More recently Australian Bureau of Agricultural and Resource Economics (ABARE) estimates suggest that reform in the electricity sector 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.[3]

Competition reforms have helped Australia adapt more readily to the internationalisation of the economy. Lower domestic production costs, arising from NCP reforms enhance Australia's export competitiveness, with the Productivity Commission estimating that export volumes would be 3.4 per cent higher than what could otherwise be achieved.[4]

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 prices rather than retained by firms as higher profits. This reduces operating costs and prices to business and consumers and encourages a wider range and improved quality of goods and services.

Competition reform also reduces market transaction costs — principally through a comprehensive program of regulatory reform — and increases information available to consumers to make informed choices.

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

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

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

Competition encourages innovation in product design, production processes and management practices as firms seek productivity gains. 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.

Sustained productivity growth is essential to the continued improvement in Australia's living standards. The Productivity Commission observes 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 the slow growth rates of previous decades unlikely.[5] 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 — 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 to competition reform across all levels of government.

The commitments embodied in these Agreements effectively underpin NCP in Australia.[6] 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).

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5 Productivity Commission 1999, *Microeconomic Reforms and Australian Productivity: Exploring the Links*, Commission Research Paper, AusInfo, Canberra, pp. 133-7.

6 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 the *Prices Surveillance Act 1983*, as well as specified riles under the Agreements aimed at ensuring the effective introduction of NCP.

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);

- the implementation of competitive neutrality for all government business activity 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 advantage 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 law 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 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 eight years since the commencement of NCP. Benefits to the community from this reform 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. 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?

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

The NCP framework enables competition reform to be undertaken in a structured, transparent and comprehensive manner — seeking to ensure all 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 and 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.[7]

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 CPA provides a mechanism — the public interest test — to examine the relationship between the overall interests of the community, competition and desirable economic and social outcomes. These factors are broader than the economic benefits and costs of a proposed reform (see Box 3 on page 13).[8]

Further, the Council of Australian Governments (CoAG) at its November 2000 meeting agreed, *inter alia*, to enhancements to the public interest test.[9]

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 of 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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7 Senate Select Committee on the Socio-Economic Consequences of the National Competition Policy, *Riding the Waves of Change*, February 2000, p. xiii.

8 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.

9 See the *Commonwealth National Competition Policy Annual Report 1999-2000* for further detail.

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 may 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 distributed across the community.

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

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

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

The advantages of a universal and general approach to meeting the needs of the 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))[10]; and
- 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.[11]

This report formally covers the period 1 July 2001 to 30 June 2002, although, where available, more recent information is provided.

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

11 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.

These payments originally comprised three tranches of competition payments and the real per capita component of the annual Financial Assistance Grants (FAGs). However, the FAGs 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 competition payments commenced in 1997-98, and involved a maximum annual payment of $200 million (in 1994-95 prices).

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

- The third tranche of 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 jurisdictions' performance in implementing the required reforms prior to the commencement of the three competition payment tranche periods — 1 July 1997, 1 July 1999 and 1 July 2001.[12] This assessment forms the basis for determining State and Territory eligibility for payment.

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.

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12 In November 2000, CoAG agreed that following the 1 July 2001 assessment, the NCC will undertake an annual assessment of each jurisdiction's performance in meeting its reform obligations as specified by the Implementation Agreement or as subsequently advised by CoAG, and provide a recommendation on the level of competition payments to be received by each State and Territory.

For the period 2002-03 all States and Territories received their full allocation of payments. Further information relating to payments, including announcements of the Commonwealth's decisions on NCC assessments are available on the Treasurer's website (www.treasurer.gov.au).

Internet resource material

Various Commonwealth publications relating to NCP matters are available from the Commonwealth Department of the Treasury website (www.treasury.gov.au), including previous annual reports.

Other relevant sites include the National Competition Council (www.ncc.gov.au); the Productivity Commission (www.pc.gov.au); the Commonwealth Competitive Neutrality Complaints Office (www.ccnco.gov.au); the Australian Competition and Consumer Commission (www.accc.gov.au) and the Department of Finance and Administration (www.finance.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 13).

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

The requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. To satisfy this commitment the 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.

An essential component of legislative reform is the validity of the review process. To ensure all relevant costs and benefits are recognised, the CPA

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.

sets out a range of issues that should be considered in examining any particular piece of legislation. These issues are set out in Box 3 below, and include social, regional and environmental factors.

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

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

Box 3: Assessing the public interest

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

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

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

The 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 2001-02*[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.

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 31 March 2003 is at Appendix A.

Reporting requirements for legislation reviews

The following sections provide information on Commonwealth progress during 2001-02 in meeting its scheduled legislation review commitments. Previous Annual Reports outlined the progress of those legislation reviews scheduled to commence within that year (or earlier).

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

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

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

Complexity of the review and details of the review panel

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

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

Terms of reference

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

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

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

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

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

Review terms of reference not published in previous Commonwealth National Competition Policy Annual Reports are included in Appendix B (see page 148).

Extent of public consultation

Public consultation is a required part of all CLRS 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.

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

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

1.2.1 Reviews completed and reform outcomes announced

The following sections report on the Commonwealth's review and reform activity in the period 1 July 2001 to 31 March 2003. Details of reviews completed in previous reporting periods are available in previous annual reports (available at: www.treaury.gov.au).

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

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

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

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

Review progress

The Evatt Report was received by the Government in August 1996. The report made recommendations concerning reforms to 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 introduced into the House of Representatives in April 1998 and after the 1998 election was re-introduced into the House of Representatives in November 1998. The opposition made numerous amendments to the Bill in the Senate in November 1999, most of which were unacceptable to the Government. The Government consulted further with all major stakeholders over the next two years. The Bill lapsed when Parliament was prorogued prior to the 2001 election. The Government is consulting further with all major stakeholders with a view to pursuing its election commitment of reforming the Act.

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

The review of the Food Standards Code commenced in May 2000. It 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.

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

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

Review progress

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

Government response

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

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

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

Government response

In April 2000, the Government introduced the Postal Services Legislation Amendment Bill 2000 into Parliament. This legislation formed the Government's response to the NCC review. The Bill was unable to obtain passage through the Parliament and was withdrawn in March 2001. The Government is continuing to examine measures aimed at improving the efficiency of the postal industry.

The Government has announced its intention to introduce further reforms in the postal sector at the beginning of 2003. These include:

- Providing the ACCC with the power to determine record keeping rules for Australia Post (as a means of ensuring transparency in Australia Post's accounts);
- Extending the ACCC's powers to arbitrate in relation to disputes about all terms and conditions of a bulk interconnection agreement and not just the discount rate as is currently the case;
- Providing the Australian Communications Authority (ACA) with the power to oversight Australia Post's service performance (this will include transferring the Auditor-General's responsibility under section 28D of the AP Act to audit Australia Post's performance against prescribed performance standards);
- Requiring the ACA to estimate the cost of providing the Community Service Obligations under section 27 of the AP Act;
- Reducing Australia Post's monopoly by:

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

- exempting the carriage of letters from a customer of an aggregation service provider to the aggregation service provider before lodging the letters with Post under a bulk interconnection arrangement; and

- exempting the carriage of letters between customers of a document exchange service and a document exchange centre.

The new functions of the ACA and ACCC are expected to be effective from 1 July 2003.

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

Government response

In early 2001, implementation of the review's recommendations commenced with Customs seeking the necessary approvals for legislative amendments. These approvals have now been obtained. The

Prime Minister and relevant Ministers have supported the amendment of the legislation.

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

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

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

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

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

Review progress

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

The review was undertaken by a review committee, chaired by Mr Peter Frawley, formerly Executive General Manager of CSR and Chairman of Livecorp; Mr Raoul Nieper, previously Head of the Queensland Department of Primary Industries, now an independent consultant; Mr Lyndsay Makin, an independent consultant, previously General Manager, Export for Nestlé, and Ms Barbara Wilson, Assistant

Director, Technical Services and Operations in the Australian Quarantine and Inspection Service (AQIS).

Government response

In 2002, the Minister for Agriculture, Fisheries and Forestry agreed to all of the review recommendations. The timeframes for implementation have been developed in consultation with industry. Implementation of the recommendations has been commenced and is being monitored by the Quarantine and Exports Advisory Council.

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

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

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

Review progress

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

Recommendation 1

The Government should remove export controls over sandalwood.

Recommendation 2

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

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

Recommendation 3

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

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

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

Government response

The Government is working to implement recommendations 1 and 2, in the first instance, in accordance with the provisions of the Export Control (Unprocessed Wood) Regulations (1986) as amended.

The Government will consider recommendation 3, following implementation of recommendations 1 and 2.

Action to remove export controls on sandalwood exports is under way in 2003.

Current reviews of plantation codes for Queensland and the Northern Territory need to be completed before the Government can consider its position on export controls over plantation-sourced wood.

In accordance with the Regulations, the CSIRO conducted scientific assessments of the plantation codes for Queensland and the Northern Territory in 2002. These assessments concluded that the codes had existing or potential shortcomings against the National Principles for Forest Practices Related to Wood Production in Plantations, published by

the Standing Committee on Forests in March 1996. Advice is being prepared for Senator the Hon Ian Macdonald, Minister for Fisheries, Forestry and Conservation on these assessments, including the need for ongoing consultations with the State and Territory Governments on making improvements to their codes to adequately reflect the National Principles.

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

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

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

Review progress

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

Government response

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

Fisheries Legislation (Department of Agriculture, Fisheries and Forestry)

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

- *Fisheries Management Act 1991*
- *Fisheries Administration Act 1991*
- *Fisheries Legislation (Consequential Provisions) Act 1991*
- *Statutory Fishing Rights Charge Act 1991*
- *Fisheries Agreements (Payments) Act 1991*
- *Fishing Levy Act 1991*
- *Foreign Fishing Licences Levy Act 1991*

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

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

Review progress

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

Government response

The Government referred the report to the ongoing review of Commonwealth fisheries policy. The Commonwealth Fisheries Policy Review report and a Ministerial statement outlining future fisheries policy direction, is expected to be tabled in Parliament in mid-May 2003.

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/chemicals/hwa/papers/review.html.

Government response

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

Amendments to the HWA commenced on 16 October 2001.

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

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

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

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

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

Review progress

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

Government response

The Government response agreeing to all 23 recommendations of the review of the Imported Food Control Act was issued on 29 June 2000.

Since then AQIS has made substantial progress. The outstanding recommendations involve major changes to IT systems or legislative change. Work on changing the IT systems has commenced and amendments to the Act were introduced into Parliament in 2002.

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

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

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

Review progress

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

Agreement dated September 2000. The report was released in December 2000.

Government response

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

In relation to the Copyright Act, the Government accepted the recommendation to repeal copyright control over parallel importation in specific industries. *The Copyright Amendment (Parallel Importation) Act 2003* came into operation on 15 April 2003. It allows the parallel importation (importation of legitimate copyright goods without reference to the Australian copyright holder) of software, enhancing competitive access to the full range of legitimate software products.

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 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.

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* commenced on 1 April 2002.

Registered Automotive Workshop Scheme

The Registered Automotive Workshop Scheme (RAWS), commenced on 1 April 2002, replacing 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.

Five new Determinations were made under the Act, setting down the requirements to be met under the new scheme.

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 an Administrator of Vehicles Standards Circular. 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 were terminated in May 2002.

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

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

The purpose of the *National Road Transport Commission Act 1991* is to provide a statutory basis for the National Road Transport Commission (NRTC), which is also governed by Heads of Government Agreements scheduled to the Act. The primary role of the NRTC is to advise the Australian Transport Council (ATC) on reforms that will improve the safety, efficiency, and reduce the administrative cost, of road transport. All regulatory proposals arising from these activities, which in some cases have been given effect in 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.

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

The *Ozone Protection Act 1989* and the *Ozone Protection (Amendment) Act 1995* (the Act) implement Australia's obligations under the *Montreal Protocol on Substances that Deplete the Ozone Layer*. The Act provides for a system of controls on the manufacture, import and export of substances that deplete ozone in the atmosphere. The key objective is the phasing out of ozone depleting substances (ODS), primarily through encouraging Australian industry to replace and/or reduce its use of ODS, in some cases ahead of the Montreal Protocol requirements, where this is deemed possible.

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

Review progress

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

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

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

Government response

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

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

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

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

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

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

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

Prices Surveillance Act 1983
(Department of the Treasury)

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

Review progress

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

Government response

The Government accepted the recommendation that the PSA be repealed and anew part inserted in to the TPA. The Treasurer's press release of 20 August 2002 and the Government's response to the Commission's report are available at www.treasurer.gov.au. Schedule 2 of the Trade Practices Legislation Amendment Bill 2003 seeks to give effect to the Government response. The Bill was introduced in the Parliament on 27 March 2003.

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

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

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

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

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

Additional objects of this Act include:

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

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

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

Review progress

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

The Attorney General tabled the report of the Australian Law Reform Commission, *Confiscation that Counts,* on 16 June 1999. The Commission had been unable to complete the competition principles review and recommended that a working group be established to complete aspects of the Commission's review and examine certain matters. The competition principles review of the *Financial Transaction Reports Act 1988* (FTR Act) was completed in August 2000. That review included a review of Division 4 of Part IV of the Proceeds of Crime Act 1987 as well as of Part III of the FTR Act, both parts dealing with various

obligations on financial institutions such as banks and like organisations to retain various records and documents. Division 4 of Part IV of the Proceeds of Crime Act 1987, which imposes record retention obligations on financial institutions, is the only Part of the *Proceeds of Crime Act 1987* which affects the business sector.

Government response

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

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

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

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

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

Review progress

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

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

Government response

On 2 July 1998, the then Minister for Health and Family Services approved the report and endorsed the proposal for a second phase review of the human quarantine provisions. A discussion paper was developed drawing on four independent research papers, and an advertisement was placed in the national press on 11 April 2000 advising of its availability and calling for submissions from any interested party. The public consultation process closed on 15 May 2000. Responses from the targeted consultation process and the national advertising campaign numbered 30. On 20 December 2000, the then Minister for Health and Aged Care approved the Human Quarantine Legislation Review Final Report. This Report recommended a two-stage response to the Review's findings:

Stage 1: Minor and technical amendments to update the legislation, remove current inconsistencies and to better align existing provisions with current policy and practice regarding human quarantine control measures.

Stage 2: A strategic examination of Health's role in quarantine in the context of current and future communicable disease management.

The Quarantine Amendment (Health) Bill 2003 has been developed in response to stage 1 recommendations and is scheduled for introduction to Parliament in winter 2003.

In response to stage 2 recommendations, the Department will examine the need for a broader strategic approach to health protection of Australia in the 21st Century, addressing issues surrounding contemporary disease preparedness, governance and response and including options for administrative review and cost recovery where appropriate.

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

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

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

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

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

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

Review progress

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

Government response

The Government accepted 19 of the 29 recommendations, releasing its response on 5 December 2002 (available at: http://www.dcita.gov.au/Article/0,,0_4-2_4008-4_112551,00.html). In December 2002 the Department commenced processes to amend the Radiocommunications Act.

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

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

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

Review progress

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

Government response

An interim response was released by the Minister for Revenue and the Assistant Treasurer on 17 April 2002 (it is available at: http://assistant.treasurer.gov.au) and on 20 June 2003 the Government's final response was released by the Minister. The press release and final response are available at:
http://assistant.treasurer.gov.au/atr/content/pressreleases/2003/059.asp).

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

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

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

Review progress

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

Government response

The Government released its interim response and tabled the report on 17 September 2002. The Treasurer's press release and the Government's interim response to the report are available at:
http://www.treasurer.gov.au/tsr/content/pressrelease/2002/055.asp.

The Commonwealth has sought the views of States and Territories on the interim response. The Government's final response will be released following consideration of these views.

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

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

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

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

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

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

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

Review progress

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

Government response

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

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

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

The Government did not adopt the report's recommendations for the removal of AWBI's role in the consent process for export of wheat in containers and bags, or for durum wheat in bulk, as it would have meant amending the WMA and changing significantly the balance between the operations of the WEA and AWBI. Consistent with assurances given by AWB Ltd, improved durum marketing arrangements were announced in July 2001.

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

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

1.2.2 Reviews completed, recommendations under consideration

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

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

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

Review progress

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

Government response

The Government is continuing to consult stakeholders in an effort to reach agreement on reforms and is awaiting responses from the Northern Territory Government and the Northern and Central Land Councils.

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

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

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

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

Review progress

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

Government response

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

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.

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

The *Broadcasting Services Act 1992* and the *Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* govern a diverse range of radio and television services for entertainment, educational and informational purposes. The Acts seek to provide a regulatory environment that varies according to the degree of influence

of certain services upon society and which facilitates the development of an efficient and competitive market that is responsive to audience needs and technological developments. The Acts also seek to protect certain social and cultural values, including promoting a sense of Australian identity, character and cultural diversity; encouraging plurality of opinion and fair and accurate coverage of matters of national and local significance; respecting community standards concerning programme material; and protecting children from programme material that may be harmful to them.

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

The review commenced in March 1999.

Review progress

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

Government response

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

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

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

- ownership and control, the Government introduced the *Broadcasting Services Amendment (Media Ownership) Bill 2002* in March 2002, passed

by the House of Representatives and introduced to the Senate in October 2002. The Bill repeals specific restrictions on foreign ownership and control of Australian media in the Broadcasting Services Act. The Bill also empowers the Australian Broadcasting Authority (ABA) to issue an exemption certificate granting an exemption to the cross-media rules.

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

- the Online Content Co-Regulatory Scheme commenced in January 2001.

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

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

Review progress

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

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

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

Government response

The Government response to the report is currently being developed.

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.

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

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

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

Review progress

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

Government response

A Government response is currently being developed and should be finalised in the first half of 2003.

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

(Department of Education, Science and Training)

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

Review progress

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

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

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

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

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

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

Government response

While the Government 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.

During 2002 the Government conducted a broad ranging review of the its higher education policy and funding arrangements. The review was undertaken within the Department of Education, Science and Training with guidance from an external reference group. There were no specific terms of reference for the review, although its purposes and a framework

for consultations were outlined in a ministerial discussion paper *Higher Education at the Crossroads*.

The outcomes of the review, including the implications for existing higher education legislation, are currently being considered by the Government. It is expected that the outcomes of the review will be announced as part of the 2003-04 Budget.

Vocational education and training funding

The *Vocational Education and Training Funding Act 1992* (the Act) sets the maximum amount of vocational education and training funding to be distributed by the Australian National Training Authority (ANTA) to the States and Territories for capital and recurrent purposes and for National Projects. The amount to be paid to ANTA for distribution is determined by the Minister in accordance with the *Australian National Training Authority Act 1992* (ANTA Act) and the ANTA Agreement (reproduced at Schedule 1 to the ANTA Act), up to the maximum amount set by the Act in any one year.

Every three years the Commonwealth negotiates a new ANTA Agreement with the States and Territories which determines the terms, conditions and level of funding for vocational education and training for the next triennium.

The current ANTA Agreement between the Commonwealth, States and Territories sets out planning, accountability and funding arrangements for Vocational Education and Training (VET) for the three years to 2003.

As a part of this Agreement, the Commonwealth made a commitment to maintain its existing funding in real terms for the period 2001 to 2003 and also to contribute growth funding to the States and Territories, conditional on them matching these funds.

A new ANTA Agreement is currently being negotiated for the period 1 January 2004 to 31 December 2006.

In addition to these negotiations the Commonwealth has, in conjunction with the States and Territories, reviewed major components funded under the Act. An example is the 1999 review of Commonwealth

assistance for VET infrastructure, for which $600 million was provided for the 2001-2003 triennium.

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

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

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

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

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

Review progress

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

Government response

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

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

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

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

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

Review progress

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

Government response

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

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

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

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

In October 1998, submissions were sought from interested parties.

Review progress

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

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

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

Government response

An Interdepartmental Committee (IDC) has been formed including representatives from the Departments of Treasury, Finance, Prime Minister and Cabinet, Industry, Tourism and Resources, Transport and

Regional Services and AFFA to develop a Government response, which is expected to be finalised in the first half of 2003.

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

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

Review progress

This review commenced in February 1997.

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

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

Government response

The Government is considering the recommendations of the Review in the context of its broader shipping policy deliberations.

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

This legislation regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone established by the Torres Strait Treaty

between Australia and Papua New Guinea. It provides the powers for the Commonwealth to undertake fisheries management in the Torres Strait Protected Zone and the mechanism for the recovery of the Commonwealth's costs and the imposition and collection of a research and development levy.

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

Review progress

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

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

Government response

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

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

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

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

Review progress

The final report was released on 12 December 2002.

Government response

The Government is consulting with the States and Territories, and will respond in due course. For further information see the Treasurer's press release at:
http://www.treasurer.gov.au/tsr/content/pressreleases/2002/082.asp.

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 is expected in the first half of 2003.

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

The Government will amend the TPA by applying modified competitive conduct rules in Part IV (Restrictive Trade Practices) to intellectual property licensing transactions, and to exempt the *Plant Breeders' Rights Act 1994* (Cth) from the modified competitive conduct rules. Passage of the Bill is expected in 2003.

1.2.3 Reviews commenced but not completed

Bills of Exchange Act 1909
(Department of the Treasury)

The objectives of the *Bills of Exchange Act 1909* are to provide uniformity of law across Australia in relation to bills of exchange and promissory notes, to provide legal certainty by confirming the nature of bills of exchange and promissory notes as negotiable instruments, and to promote efficiency in the market place which utilises bills of exchange and promissory notes as financial instruments.

The review of the Act commenced in April 1997. It 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 expected to be finalised by the end of 2003.

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

The objectives of the Disability Discrimination Act 1992 are:

- to assist in eliminating discrimination against people with disabilities in a range of areas of public life;

- to ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as the rest of the community; and

- to promote recognition and acceptance within the community that people with disabilities have the same fundamental rights as the rest of the community.

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

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

Review Progress

The Productivity Commission commenced on 5 February 2003, and the terms of reference specify that it is to be completed within twelve months of that date, ie in February 2004.

The Commission has released an issues paper. Submissions are due in mid-May, with a draft report expected to be released in October 2003.

Defence Housing Authority Act 1987
(Department of Defence)

The terms of reference for this review were agreed to in June 1998. Since then, however, extensive competitive neutrality reforms have been applied progressively to the Defence Housing Authority (DHA), including a commercial rate of return, debt neutrality and a tax equivalent regime. In addition, a Services Agreement has been instituted to set DHA relations with Defence on a commercial footing, and this Agreement does not oblige Defence to exclusively use the services of the DHA. A comprehensive external review of the *Defence Housing Authority Act 1987* was commissioned by the DHA and reported in November 2000. The outcome of this review is planned to be considered by Ministers in the second half of 2003.

The Department is examining whether the Act contains any other competitive restrictions that need to be reviewed.

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*.

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

The review of the *Quarantine Act 1908* (Nairn Review) was underway prior to its listing on the CLRS. AQIS is proposing to commence a comprehensive re-examination of the Quarantine Act in 2003 and any amendments arising from this review will be subject to the RIS process. This re-examination of the Act will also include a review of those elements of the Act that were unchanged following the Nairn Review for compliance with CPA legislation review principles.

1.2.4 Reviews not commenced

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

This review has not commenced.

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

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

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

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

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 undergone 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. Consequently, the Prime Minister and the then Minister for Financial Services and Regulation agreed, in 2001, to the request from the Minister for Agriculture, Fisheries and Forestry to defer this review. Subsequently, the ADC announced the cessation, from June 2002, of the

cheese single desk sales arrangements to Japan. Also, over the past twelve months reforms of the dairy industry have continued. These included a review of the dairy statutory authority arrangements resulting in the forthcoming merger and corporatisation of the Dairy Research and Development Corporation (DRDC) and the ADC into one Corporations Act company. In light of the ongoing reforms that have repeatedly removed the largest part of the current regulations that restricted competition, in 2002the Prime Minister and the Parliamentary Secretary to the Treasurer agreed to further defer the review of the Act until the industry reforms have been completed, expected by mid 2003. The appropriate nature and reform of review will be guided by any remaining restrictions on competition.

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

This review had not commenced by 31 March 2003.

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

The review had not commenced by 31 March 2003.

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

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

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

The remaining regulations relevant to the CLRS were:

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

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

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

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

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

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

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

Of the three Codes previously created under the repealed Act, one, the Code of Practice for the Safe Transport of Radioactive Substances 1990, has already been reissued as the Code of Practice for the Safe Transport of Radioactive Material 2001, whilst the remaining two, the Code of Practice on the Management of Radioactive Wastes from the Mining and Milling of Radioactive Ores 1982 and the Code of Practice on Radiation Protection in the Mining and Milling of Radioactive Ores 1987, will be

reissued shortly as one revised code, the Code of Practice and Safety guide for Radiation Protection and Radioactive Waste Management in Mining and Mineral Processing.

All Codes reissued as part of the Australian Radiation Protection and Nuclear Safety Agency's Radiation Protection Series will be subject to existing COAG RIS requirements.

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

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

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

This review had not commenced by 31 March 2003. The Department is examining whether the review of the Act is required.

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

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

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

In December 1997, the Government decided to review the Navigation Act in two stages. The first stage considered repeal of matters that

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

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

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

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

Review progress

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

Government response

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

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

The review had not commenced by 31 March 2003. The Government responded to the Senate Economics Reference Committee Report in December 2002, confirming the Government's position favouring repeal of both Acts. Currently, the Government continues to actively pursue reform of the petroleum retail-marketing sector as part of the Downstream Petroleum Industry Framework, including the proposed repeal of these Acts. The reform package will be subject to the RIS process.

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

This review had not commenced by 31 March 2003.

1.2.5 Legislation deleted from the CLRS

This section identifies legislation deleted from the CLRS during the period 1 July 2001 to 31 March 2003. Information on reviews deleted in previous reporting periods is available in earlier annual reports (available at: www.treasury.gov.au).

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 deleted from the CLRS in June 2002.

A review of the Export Finance and Insurance Corporation's (EFIC's) medium term export finance business is underway and is examining private sector developments in this area since the comprehensive 2000 Review of Export Credit and Finance Services[10]. The review is being overseen by an Interdepartmental Committee, chaired by Department of Foreign Affairs and Trade, and will receive independent advice from a consultant specialising in this field. The review will consider whether there is a need to extend competitive neutrality to EFIC's medium term export finance business, having regard to the development of any viable competition in the private sector in this area. The review includes consultations with major relevant private sector companies and is due to be considered by the Government by the end of 2003.

10 Commonwealth National Competition Annual Report 2000-01 pp77-78.

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 will be considered by Parliament in February 2003.

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 have been finalised, with outcomes / recommendations of the investigations into cost recovery and use of alternative assessment providers being endorsed by Primary Industries Standing Committee (PISC) in late 2002. The final report of the investigations into manufacturers licensing of agricultural chemicals is expected to be sent to the March 2003 Primary Industries Standing Committee meeting for endorsement.

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, has responded to the recommendations, most of which have been implemented. The remaining recommendations are being progressed through the Product Safety and Integrity Committee. The final report of the taskforce was

forwarded to the March 2003 meeting of the Primary Industries Standing Committee.

The Government has considered the Report's recommendations in relation to compensation for third party access to chemical assessment data and agrees that there should be an enhanced data protection mechanism. In this regard, initial drafting instructions for legislation are being prepared for further consultations with industry.

The Intergovernmental Response rejected the Report's recommendation with respect to efficacy and decided to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is appropriate. Pursuant to the Agvet Code, efficacy is required to be evaluated in respect of 'truth' and 'appropriateness'. The Response considered that limiting the National Registration Authority for Agriculture and Veterinary Chemicals (NRA's) consideration to 'truth' as per the recommendation would mean that there would be no direct assessment by the NRA of any flow-on or induced effects resulting from the use of a chemical with an efficacy level as determined by the registrant. For example, a chemical registrant could submit to the NRA that a chemical be marketed with a 45 per cent efficacy level and this could be assessed by the NRA as 'true' with no consideration being given as to whether the 45 per cent efficacy is appropriate.

Such an approach would negate the wider community considerations regarding a product's efficacy through induced risks to public health, risks to occupational health and safety, and the adverse impact on the environment. In assessing these risks, the NRA does so against standards it has established, many of which are recognised internationally and practiced by several other nations, including member countries of the OECD.

The Intergovernmental Response considered that the 'appropriateness' requirement is necessary if the objectives of the legislation, and Australia's international obligations, in relation to the protection of public health, protection of occupational health and safety and protection of the environment, international risk reduction and disease prevention efforts are to be met and maintained.

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 of the review).

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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 are being taken up in the 2003 review of the MRA.

On 8 January 2003, the Productivity Commission commenced a nine-month commissioned research study reviewing the Trans-Tasman Mutual Recognition Arrangements (TTMRA) and its internal Australian equivalent, the Mutual Recognition Agreement (MRA).

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

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

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

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

Government response

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

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

1.3.1 Other national reviews with Commonwealth involvement

The 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.[13]

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.

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

Government response

As a number of the Galbally Review recommendations potentially impact on the management of agricultural and veterinary chemicals, the Working Party's draft response was considered by the Primary Industries Ministerial Council (PIMC) for comment. The draft response is being updated to take into account the PIMC comments that were received in November 2002. The TGA expects the final response, together with the Galbally Report, to be provided through the AHMC to CoAG by September 2003.

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.[14]

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.

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

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

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

1.4 New and amended regulation (enacted since April 1995)

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

The Prime Minister's 1997 *More Time for Business*[15] 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 meet CPA obligations, promote effective and efficient regulation and make transparent the possible impact of proposed legislation, a Regulation Impact Statement (RIS) must be prepared for all proposed new and amended Commonwealth regulation with the potential to restrict competition, or impose costs or confer benefits on business (Box 1). The RIS must clearly identify a problem and relevant policy objective and assess the costs and benefits of alternative means of fulfilling the objective.

A function of the Office of Regulation Review (ORR) — 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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15 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 2001-02*.

In 2001-02, 145 Commonwealth regulatory proposals required a RIS. In 130 cases a RIS was prepared, of which 128 were assessed by the ORR as being of an adequate standard. Accordingly, the RIS process compliance rate at the decision-making stage was 88 per cent. This rate was slightly higher than that achieved in previous years.

The Government introduced 207 Bills into Parliament in 2001-02. Of these, 150 did not require preparation of a RIS because there was no impact on business or the proposed changes accorded with specified circumstances where a RIS is not required. Of the RISs prepared at the decision-making stage for Bills, 84 per cent were adequate (compared

with 73 per cent in 2000-01). At the tabling stage, 95 per cent were adequate (compared with 88 per cent in 2000-01).[16]

In the case of disallowable instruments (subordinate legislation and regulation), 87 per cent of the RISs prepared at the decision-making stage were adequate (compared with 85 per cent in 2000-01) and 94 per cent were adequate at the tabling stage (compared with 89 per cent in 2000-01).

1.4.2 Legislation enacted since 1 July 2001 that may restrict competition

Fifteen proposals introduced via Commonwealth legislation introduced in the period 1 July 2001 to 30 June 2002 were identified by the ORR as having the potential to restrict competition (see Table 1). The potential impact on the community of these regulations varies from modest to significant. The impact is discussed in published RISs and will depend in part on how the various legislative provisions are implemented and administered by regulators.

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

Table 1.1: Selected Commonwealth legislation introduced into Parliament between 1 July 2001 and 30 June 2002 having the potential to restrict competition

Booderee National Park Management Plan
Broadcasting Services (Event Continuation) Declaration No. 1 of 2001
Cairns Area Plan of Management Amendment No. 1 2002
Carrier Licence Conditions (Telstra Corporation Limited) Declaration 1997 (Amendment No. 1 of 2002)
Christmas Island Space Centre (APSC Proposal) Ordinance 2001 (Christmas Island) 2001 No. 4
Great Barrier Reef Marine Park Amendment Regulations 2002 (No. 1)
Health Insurance (Diagnostic Imaging Services Table) Amendment Regulations 2001
Macquarie Island Marine Park Management Plan
Primary Industries (Excise) Levies Amendment Regulations 2002 (No. 1)
Proceeds of Crime Bill 2002
Prudential Standard on Outsourcing
Telecommunications Labelling (Customer Equipment and Customer Cabling) Amendment Notice 2002 (No. 2)
Telstra Carrier Charges — Price Control Arrangements, Notification and Disallowance Determination (No. 1 of 2002)
Trade Practices Amendment (Liability for Recreational Services) Bill 2002
Trade Practices Amendment (Telecommunications) Bill 2001

2 Competitive neutrality

2.1 Why implement competitive neutrality?

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

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

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

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

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

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

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

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

2.1.1 Which Government activities are subject to competitive neutrality?

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

- Designated GBEs are either Commonwealth Authorities or Commonwealth Companies prescribed by the regulations under the *Commonwealth Authorities and Companies Act 1997* (CAC Act). 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 Companies (previously referred to as Commonwealth Share-Limited Companies) are companies established under the *Corporations Act 2001* in which the Commonwealth has a controlling interest. 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 identifiable parts of a *Financial Management and Accountability Act 1997* Agency (FMA Act Agency) that have the primary objective of trading goods and service in the market, for the purpose of earning a commercial return. The management and accounting structures of Business Units are separate from other parts of the overall organisation.

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

- baseline costing for activities undertaken for market testing purposes;

- public sector bids; and

- other commercial activities undertaken by agencies prescribed by regulation under the FMA Act, Commonwealth Authorities or Departments, with a commercial turnover of a least $10 million per annum, must also apply competitive neutrality.

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.

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 costs of this course of action do not exceed the benefits.

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;
- 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.

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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 2003.

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

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 market testing arrangements, they must comply with competitive neutrality. As a result, in-house units should not have an unfair advantage over other bidders.

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

2.1.3 Community Service Obligations

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

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

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

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

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

2.2.1 Government Business Enterprises and Commonwealth Companies

GBEs and Commonwealth Companies are required to have their competitive neutrality arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. 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;
- achieve financial targets for some activities;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and

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

Competitive neutrality arrangements applying to significant commercial business activities provided by non-GBE agencies prescribed by regulation under the FMA Act 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 smaller 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 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 notional adjustment to their cost base 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 Market testing

Market testing (previously referred to as Competitive Tendering and Contracting)involves inviting enterprises to tender for the provision of relevant services and evaluating those tenders against predetermined selection criteria and against each other. Competitive neutrality arrangements should be applied to all bids by Commonwealth Government in-house units. This ensures that in-house units compete on a comparable basis to private (and other public) sector competitors.

In practice this means:

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

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

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

  - incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as Government furnished, 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).

Market testing activities with turnover (bid) under $10 million per annum still have to include a commercial rate of return (set by their parent agency) and make notional adjustments for: FBT and GST (unless exemptions are available for reasons other than government ownership) and other Commonwealth indirect taxes; 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

PO Box 80
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 2001-02

In the period 1 July 2001 to 31 March 2003, the CCNCO carried out four investigations — ARRB Transport Research Limited; Meteorological Services to Aviation; Sydney and Camden Airports; Docimage Business Services and OzJobs — arising from complaints of non-compliance with competitive neutrality principles. The following material summarises their progress. The details of CCNCO's reports are available at www.ccnco.gov.au. 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.

In its consideration of the options, the Government has decided to address the issue of aviation weather service provision in its ongoing aviation reform program.

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.

OzJobs

In November 2001, a representative of a number of labour hire and recruitment companies lodged a complaint alleging that the Government is subsidising the operation of OzJobs (a business division of Employment National); that it is not paying payroll taxes and insurance premiums (including public liability and workers compensation) on a comparable basis to its private sector competitors.

The CCNCO found that OzJobs is operating in a manner consistent with competitive neutrality principles and no action is required as a result of this complaint. Specifically, the CCNCO concluded that:

- allocation of costs within Employment National to OzJobs does not understate the costs incurred by OzJobs or artificially transfer some of those costs to other areas of Employment National. Further, to neutralise any competitive advantage derived from OzJobs' access to Comcare's workers compensation insurance, it has added a notional adjustment to its cost base to reflect higher premiums that would be applicable if it was a private sector company;

- there is no evidence that OzJobs is not paying Commonwealth, State, Territory or local government taxes applicable to equivalent private sector business, or otherwise making appropriate cost base adjustments; and

- as Employment National (and OzJobs) is excluded from insuring against public liability under the Comcover scheme, it selects an insurer from the general marketplace and pays normal premiums determined on a competitive basis.

Earlier CCNCO competitive neutrality investigations

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.

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

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

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

2.4 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 2003. 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).

Table 2.1: Agencies that applied competitive neutrality on a voluntary basis during 2001-02

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	PA	No	Yes	No	Yes	No	n/a	No
Australian Electoral Commission	Conduct of local government elections	PA	No	Yes	No	Yes	No	n/a	No
Bureau of Meteorology	Commercial services	PA	No	Yes	Yes	No	n/a	No	No

n/a — Not Applicable
PA — Prescribed Agency
Note: Prescribed Agencies are Other Commercial Business Activities (over $10m per annum)

Table 2.2: Agencies that applied competitive neutrality during 2001-02

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Anindilyakwa Land Council	Administration	CA (non-GBE)	Yes	No	No	No	n/a	n/a	No
Anindilyakwa Land Council	Consultancy	CA (non-GBE)	Yes	No	No	No	n/a	n/a	No
Australian Government Solicitor	Legal and related services	GBE	Yes	n/a	Yes	Yes	Yes	Yes	No
Australian Hearing Services	Supply of hearing related goods and services	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	Yes

Table 2.2: Agencies that applied competitive neutrality during 2001-02 (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Australian Postal Corporation		GBE	Yes	n/a	Yes	Yes	No	n/r	Yes
Australian Protective Service	Protective security services	BU	Yes	Yes	Yes	Yes	n/a	n/a	No
Australian Rail Track Corporation		GBE	Yes	n/a	Yes	Yes	n/a	n/r	No
Australian Securities & Investment Commission	Printing/imaging	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	No	No
Australian Security Vetting Service	Provider of security vetting services	Dept of State	Yes	Yes	Yes	No	n/a	n/a	No
Australian Submarine Corporation Pty Ltd	Submarine maintenance	CC	Yes	Yes	Yes	Yes	n/a	Yes	No
Australian Technology Group Limited		GBE	Yes	n/a	Yes	n/a	n/a	n/r	No
Australian Valuation Office	Valuation services	BU	Yes	Yes	Yes	Yes	No	n/a	No
Bankstown Airport Ltd (BAL), Camden Airport Ltd (CAL) and Hoxton Park Airport Ltd (HPAL)	Sold in April 2003	GBE	Yes	n/a	Yes	Yes	n/a	n/r	No
Centrelink	Carelink (services in WA)	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No

Table 2.2: Agencies that applied competitive neutrality during 2001-02 (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Centrelink	Family law assistance	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Centrepay	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Passport call centre	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Australian Greenhouse Office	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No
Comland		GBE	Yes	n/a	Yes	Yes	No	n/r	No
Commonwealth Scientific and Industrial Research Organisation (CSIRO)	Research, technical and consulting services	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	n/a	No
ComSuper	Superannuation Administration Services	PA	Yes	Yes	Yes	Yes	n/a	No	No
Defence Housing Authority		GBE	Yes	n/a	Yes	Yes	n/r	n/a	No
Department of Finance and Administration	Property management	Dept of of State	Yes	Yes	Yes	No	n/a	No	No

Table 2.2: Agencies that applied competitive neutrality during 2001-02 (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Department of Finance and Administration	Insurance premiums	Dept of of State	Yes	Yes	Yes	Yes	n/a	Yes	No
Department of Industry, Tourism & Resources (incl Australian Government Analytical Laboratories)	Analytical laboratory services	BU	Yes	Yes	No	Yes	Yes	Yes	Yes
Employment National Limited, Employment National (Administration) Limited		GBE	Yes	n/a	No	Yes	n/a	n/r	No
Export Finance and Insurance Corporation	Export credit insurance	CA (non-GBE)	Yes	Yes	Yes	Yes	n/a	Yes	Yes
Department of Family and Community Services	Services provided under s25 of the Disability Services Act	BU	Yes	Yes	Yes	Yes	n/a	Yes	No
Health Services Australia Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/r	No
Medibank Private Limited		GBE	Yes	n/a	Yes	Yes	n/a	n/r	No
Reserve Bank of Australia	Registry	CA	Yes	Yes	Yes	Yes	n/a	n/a	No
Reserve Bank of Australia	Transactional banking	CA	Yes	Yes	Yes	Yes	n/a	n/a	No
Royal Australian Mint	Sales of coins	BU	Yes	Yes	Yes	Yes	n/a	Yes	Yes

Table 2.2: Agencies that applied competitive neutrality during 2001-02 (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligations
Snowy Mountains Hydro-electric Authority	Ceased operating June 2002	GBE	Yes	n/a	n/a	Yes	n/a	n/a	No
Special Broadcasting Service Corporation	On air advertising and sponsorship	CA	Yes	Yes	No	No	n/a	n/a	No
Sydney Airports Corporation Limited	Sold June 2002	GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Telstra Corporation		GBE	Yes	n/a	Yes	Yes	No	n/r	Yes

GBE — Government Business Enterprise
BU — Business Unit
CA — Commonwealth Authority
CC — Commonwealth Company
PA — Prescribed Agency
n/r — No response or insufficient information received
n/a — Not applicable
Note: Commonwealth Authorities, Departments of State and Prescribed Agencies are Other Commercial Business Activities (over $10m per annum)

3 Structural reform of public monopolies

3.1 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. The pre 1997 review of telecommunications regulatory arrangements ran over an extended period, involved extensive public consultation and taking of submissions. The review's issues paper canvassed regulatory arrangements relating to industry structure. In light of the review, the Government adopted the current approach to competition regulation.

In 1997, the ACCC established a telecommunications working group to review Telstra's accounting and cost allocation arrangements, to assist the development of an enhanced accounting separation model for Telstra businesses. Draft rules were released in June 2000, with final record keeping rules coming into effect in May 2001. These rules have been enhanced further though the Government's decision that requires the preparation and publication of regulatory accounts to provide greater transparency of Telstra's wholesale and retail operations, particularly in relation to the core interconnection services provided over Telstra's network. This measure was implemented through the *Telecommunications Competition Act 2002*, which enables the Government to direct the ACCC to require Telstra to publish regulatory records.

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

3.1.1.1 Competition in provision of USO services

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

The Government has implemented two initiatives to promote facilities based competition in the delivery of the USO:

- The Extended Zones Tender — which involved a single provider franchise model; and
- The USO contestability pilots — which involved a multi-provider model.

The Extended Zones Tender involved a tender for $150 million to deliver untimed local calls in Extended Zones, with the successful tenderer becoming the universal service provider for three years. The tender was won by Telstra.

In the USO contestability pilots, Telstra is required to operate as the primary universal service provider but other carriage service providers can obtain approval from the industry regulator, the Australian Communications Authority, to compete with Telstra for per service subsidies for the supply of the standard telephone service. These pilots commenced on 1 July 2001.

The Regional Telecommunications Inquiry (RTI) reported that the Extended Zones tender process had generated significant competitive pressure and benefits for Australians living in remote areas. However, it noted that the exclusive nature of the tender may have reduced ongoing competition in that market.

Regarding the USO contestability pilots, the RTI reported that despite early interest, no competing service providers had entered the pilot areas. The RTI supported the principle of USO contestability, but suggested that further work was needed to validate its practical utility.

The Government is currently considering its response to the RTI.

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 and Administration undertook a Clause 4 review of SACL. The review was completed in June 2002.

At the time the Government began privatising Federal airports, it established a comprehensive economic regulatory framework to apply to airport lessees. The arrangements were intended to promote operation of the airports in an efficient and commercial manner, while at the same time protecting airport users from any potential abuse of market power by airport operators. These arrangements included prices monitoring and a Consumer Price Index (CPI-X) cap on aeronautical charges at Adelaide, Brisbane, Canberra, Coolangatta, Darwin, Hobart, Launceston, Melbourne, Perth and Townsville airports. Prices monitoring of aeronautical related charges, transparency measures covering airport specific financial reporting, quality of service reporting and airport specific access arrangements were also part of the arrangements. When Sydney Airport was leased to the Government owned SACL, it was also subjected to prices notification and monitoring of aeronautical and aeronautical related charges, respectively. Before privatisation, SACL was a company subject to the 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 then Minister for Financial Services and Regulation signed new instruments in relation to the existing regime for price oversight at Federal airports. The revised regime retained price caps in Brisbane, Melbourne and Perth airports but allowed for a once only price increase up to specified amounts. This was to allow the airport lessees to better manage the major structural adjustments taking place in the domestic aviation market. Formal monitoring of the prices, costs and profits related to the supply of aeronautical related services was retained for Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports. The Productivity Commission began a review of price

regulation of airport services in December 2000 and presented its final report to Government on 25 January 2002. The purpose of this inquiry was to examine whether new regulatory arrangements were needed to ensure that the exercise of market power may be appropriately counteracted in relation to those airport services or products where airport operators are identified as having most potential to abuse market power. The Commission's recommendations include five years of price monitoring (but no price caps) at Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra, and Darwin airports. The Commission recommended that alterations to such a regime only be considered after five years (at which time the regime would be independently reviewed). A second option of retaining a CPI-X price cap on a limited number of airports was also considered during the review. The Government released the report, and its response, on 13 May 2002.

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

3.1.2.1 Access arrangements for significant infrastructure facilities

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

The Productivity Commission provided its report on the Price Regulation of Airport Services on 25 January 2002. The Commission recommended that there were insufficient grounds for an airport-specific access regime as the general access provisions available under Part IIIA of the TPA (and Part IV) provide sufficient safeguards for those seeking

access to airport facilitites. The Government has accepted the Productivity Commission's recommendation and 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 45). 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 1974* (TPA). This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Commonwealth in determining actual terms and conditions of access.

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

- declaration of 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 Federal airports and for natural gas transmission and distribution pipelines interact with the national access regime.

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

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 2001-02, and to the end of March 2003.

4.3.1 Northern Territory electricity network access regime

The NCC received an application to the certification of the Northern Territory's electricity access regime on 30 November 1999. Following amendments by the Northern Territory to the original application, the NCC recommended on 21 December 2001 that the regime be certified.

The Parliamentary Secretary to the Treasurer certified the regime as effective on 21 March 2002 for a period of 15 years. A copy of the NCC's recommendation and a statement of reasons for the decision by the Parliamentary Secretary to the Treasurer is available on the NCC website (www.ncc.gov.au).

4.3.2 Wirrida to Tarcoola rail line declaration

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

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

5 Government Business Enterprises — prices oversight

5.1 The purpose of prices oversight

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

The 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 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.

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, 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. 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. The report and the Government response were released on 20 August 2002 (see page 38). In line with the report's recommendations, Schedule 2 of the Trade Practices Legislation Amendment Bill 2003 was introduced into the Parliament on 27 March 2003.

5.2.1 Matters referred to the ACCC

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

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

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

significant direct or indirect impact on constitutional trade or commerce;

- the NCC has then recommended that the responsible 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 2001-02.

6 Conduct Code Agreement

6.1 Competitive conduct rules

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

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

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

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

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

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

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

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

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

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

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

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

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

6.2.1 Existing legislation reliant on section 51(1)

The following legislation containing exception provisions has been previously identified:

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

- *Wheat Marketing Act 1989* (section 67(6)); and
- *Year 2000 Information Disclosure Act 1999* (section 17).

6.2.2 New legislation: exceptions made in 2001-02

There were no notifications of Commonwealth legislation made in reliance on section 51(1) in the period 1 July 2001 to 31 March 2003.

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 CoAG consideration of energy market reform

In June 2001, CoAG reaffirmed their commitment to currently agreed principles, reforms and currently announced timetables underpinning the development of the national electricity and gas markets and reform of the energy sector as a whole. The outcomes include:

- agreement to a National Energy Policy Framework;
- the establishment of a new Ministerial Council on Energy;
- the establishment of an Independent Review of Energy Market Directions (the Parer Review); and
- the National Electricity Market (NEM) Ministers Forum to address more immediate impediments to an effective NEM.

The Ministerial Council on Energy comprises Energy Ministers from all States and Territories and is chaired by the Commonwealth Minister for Industry, Tourism and Resources. The Ministerial Council has responsibility to provide effective policy leadership to meet the

opportunities and challenges facing the energy sector and to oversee the continued development of national energy policy. Priority issues include examining:

- likely energy use (supply and demand) scenarios facing Australia over the next decade and possible policy issues to be addressed;
- existing and potential gas and electricity market regulatory structures and institutional mechanisms, including the extent to which they facilitate an efficient and competitive energy sector with adequate investment and benefits to users;
- the potential for harmonising regulatory arrangements, removing inconsistencies and integrating networks;
- opportunities for and impediments to increasing interconnections and system security in gas and electricity; and
- ways of accelerating the delivery of improved consumer choice, providing better information and enhancing cooperative energy efficiency activities and decision making for demand-side participation.

The final report of the Parer Review was released on 20 December 2002. The Government is considering its findings.

7.2 Electricity

In July 1991, CoAG agreed to develop a competitive electricity market in southern and eastern Australia. The Commonwealth has taken a leading role to ensure the development and implementation of electricity reforms on a national basis. To date, competition reform in the electricity sector has delivered structural reform of publicly owned utilities, competition among electricity generators, a competitive wholesale spot market for electricity (NEM), an efficient financial contracts market, third-party access to, and economic regulation of, network services, and customer choice for contestable large electricity consumers and all retail consumers in some jurisdictions.

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

Key developments in electricity market reform during 2001-02 and subsequently included the following:

- *Retail Contestability*. Full retail contestability (FRC) has been introduced in Victoria, New South Wales and South Australia. The Australian Capital Territory will introduce FRC in 2003 while the Queensland Government has delayed its introduction.

- *Wholesale Market Development*: The National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO), the NEM Ministers Forum and the Ministerial Council on Energy (MCE) have progressed a range of activities to promote more efficient market development. These have ranged from regulatory structures and institutional mechanisms, to increased system interconnenction and security and improved customer choice, as well as more specific issues relating to bidding practices in the NEM, potential for regulatory consolidation and harmonisation, and policy oversight in the NEM. Some of these reviews have been completed, while others have been postponed subject to the outcomes of the Parer Review. Once a response to the Parer Review has been formalised, the Commonwealth will seek further progress on these issues relating to market development through the appropriate mechanisms.

- *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 early 2003; Planned SNI (a 240MW regulated line between NSW and South Australia) proposed by TransGrid. Murraylink (a 220MW non-regulated line between Victoria and South Australia owned and operated by TransEnergie) is now operational.

  Action in the National Electricity Tribunal (TransEnergie v NEMMCO, TransGrid and others) and the subsequent TransEnergie

appeal suggests that market rules and procedures require review to resolve issues relating to planning and investment in network infrastructure. TransEnergie have applied to the ACCC for regulated status following an unfavourable National Electricity Tribunal decision in November 2002.

- *Financial Market Development:* The Commonwealth has been facilitating industry driven development of mechanisms to manage financial risk in the capital-at-risk electricity industry. Both the Sydney Futures Exchange and the Australian Stock Exchange commenced trading electricity futures in the last quarter of 2002. The Commonwealth will continue to encourage the maturing and development of financial markets. Off-market risk management mechanism such as Electricity Tariff Equalisation Fund and Benchmark Pricing Agreement continue to constrain financial market development and concentrate the cost of risk management in the private sector.

7.3 Gas

The Australian natural gas market has traditionally comprised State based market structures, in which monopolies operated at the production, distribution and retailing stages. The supply chain was highly integrated, with legislative and regulatory barriers restricting interstate trade. These characteristics, in the absence of links between the States' pipeline systems, served to perpetuate low levels of competitive behaviour in the market place.

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

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;

- remove a number of restrictions on interstate trade; and

- develop a nationally integrated competitive natural gas market by:
  - establishing a national regulatory framework for third party access to natural gas pipelines; and
  - facilitating the inter-connection of pipeline systems.

Governments and industry, through the Gas Reform Implementation Group and its predecessor, the Gas Reform Task Force, have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

In November 1997, the 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.

Over the past 12 months governments and industry have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

7.2.1 Review of Gas Access Regime

Legislation giving effect to the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) operates in all jurisdictions.

The November 2002 MCE agreed, in principle, to an independent review of the National Gas Access Regime.

Terms of reference are being developed and are to be subject to consultation with state and territory governments.

7.2.2 Code changes

The National Gas Pipelines Advisory Committee (NGPAC) monitors and reviews the operation of the Code and makes recommendations to Ministers on changes to the Code. The Commonwealth, through the Department of Industry, Tourism and Resources is represented on NGPAC.

As required by the Code, NGPAC prepared an information memorandum and undertook public consultation for significant proposed Code changes. NGPAC considered the submission received before making recommendations to the Ministers. The Code changes approved by Ministers in 2001-02 are:

- the introduction of an Across Period Incentive Mechanism to encourage continuous efficiency improvements by pipeline operators; and

- a proposed Code change to enable a single Access Arrangement to regulate two or more separate gas pipelines (the sixth Amending Agreement) is currently being considered by Ministers.

7.2.3 Retail reform

FRC has commenced in New South Wales, Victoria and the Australian Capital Territory. The other states are working towards the introduction of FRC.

7.2.4 Access arrangements

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

All first round access arrangements for distribution networks have been completed. Several access arrangements for transmission pipelines have been approved by the relevant regulator with arrangements still to be approved for the Moomba to Sydney Pipeline, the Amedeus Basin to Darwin Pipeline, the Dampier to Bunbury Natural Gas.

7.4 Water

Water reform is a key national priority in the management of natural resources. In particular, jurisdictional delivery on water property right related reforms is of key importance in Australia and remains a priority for Governments to resolve. Australia's water reform initiatives have been formulated against the background of considerable concern about the state of the nation's water resources and a recognition that an important part of the solution relies on significant policy and institutional change.

With States and Territories having constitutional responsibility for water resource management, they are responsible for driving on-ground change. However, the Commonwealth aims to facilitate the delivery of water reform through a variety of mechanisms.

7.4.1 Water reform framework

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 National Competition Council (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.

7.4.2 Overview and progress

Progress in implementing the reforms has varied among jurisdictions and there is a need to maintain the reform momentum, particularly with respect to the establishment of clear and secure property rights and the provision of water for the environment. The NCC's 2002 assessment of jurisdictions' progress with implementing NCP and related reforms found that further work was needed in a number of key priority areas, particularly around water property rights, environmental flows and water pricing and planning.

CoAG considered property rights at both its meetings in 2002 and agreed that a paper on water property rights, developed by the Chief Executive Officers' Group on Water (CEOGW), was to be released for a consultation process with key stakeholders and to finalise this report by April 2003.

7.4.3 Co-ordination of water reform

Two committees were established under the Natural Resource Ministerial Council to progress national consideration of water reform and related issues. CEOGW, currently chaired by Victoria, was convened as a forum to provide strategic input to assist jurisdictions in the transition to more sustainable water management, in particular in implementing the CoAG Water Reform Framework. A key priority of this group has been to progress national consideration of water property right issues. The group developed Draft Water Entitlement and Allocation and Principles and Draft Guidelines on Providing Adjustment Assistance for Changes in Water Entitlements, which were endorsed for public consultation at the CoAG meeting on 6 December 2002.

In addition, as a sub-group of the Land, Water and Biodiversity Committee of the NRMMC, the Water Reform Task Group is currently

undertaking a major body of work for the CEOGW on enhancing water markets. It is anticipated that key reports will be delivered by June 2003.

7.5 Road transport

The National Road Transport Commission (NRTC) was established in 1991 to oversee development and implementation of the road transport reform program under the direction of a Ministerial Council.

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

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

- uniform heavy vehicle charges;
- uniform arrangements for transportation by road of dangerous goods;
- vehicle operation reforms covering national vehicle standards, roadworthiness, mass and loading laws, oversize and overmass vehicles and road rules;
- a national heavy vehicle registration scheme;
- a national driver licensing scheme; and
- a consistent and equitable approach to compliance and enforcement with road transport laws.

To also allow more timely implementation of reforms, the six initial reform modules were broken into eleven parts. Additionally, the Australian Transport Council (ATC) agreed two ten point 'fast track' packages of reform in 1994 and 1997 known as the First and Second Heavy Vehicle Reform Packages. These reforms, taken together, form the original NRTC reform agenda of 31 reforms.

One reform, Heavy Vehicle Charges, was assessed under the first tranche in 1997, while 19 reforms were assessed in 1999.

Throughout 1999-2000 a working group, the Standing Committee on Transport, developed a framework for assessment, including consulting industry. The ATC and CoAG agreed on the framework and it was provided to the NCC to serve as the basis for its June 2001 third tranche assessment of road transport reforms. Six reforms were included in this assessment framework. Only one of these reforms, a second-generation of Heavy Vehicle Charges, was relevant to the 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. Most of these were implemented previously. It is not clear whether, and to what extent, the Commonwealth is required to implement the heavy vehicles registration scheme. This will be clarified by the review of the *Interstate Road Transport Act 1985*. Subject to Government consideration of the review, legislation reform is expected to occur in 2003-04. If the review finds that the Commonwealth should implement the heavy vehicles registration scheme it will be included in this reform package. This is the only outstanding item on the Commonwealth's agenda.

Governments did not endorse a road transport reform framework for the 2002 assessment of governments' progress in implementing NCP and related reforms.[1]

1 National Competition Council 2002, *Assessment of governments' progress in implementing the National Competition Policy and related reforms, Volume one: Assessment, August 2—2,* AusInfo, Canberra, p. 3.103.

Commonwealth Legislation Review Schedule (as at 30 March 2003) — 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

Disability Discrimination Act 1992

PRODUCTIVITY COMMISSION ACT 1998

I, IAN CAMPBELL, Parliamentary Secretary to the Treasurer, under Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer the *Disability Discrimination Act 1992* (DDA) and the Disability Discrimination Regulations 1996 ('the legislation') to the Productivity Commission for inquiry and report within 12 months of the date of receipt of this reference. The Commission is to hold hearings for the purpose of the Inquiry.

2. The Productivity Commission is to report on the appropriate arrangements for regulation, taking into account the following:

a) the social impacts in terms of costs and benefits that the legislation has had upon the community as a whole and people with disabilities, in particular its effectiveness in eliminating, as far as possible, discrimination on the ground of disability, ensuring equality between people with disabilities and others in the community, and promoting recognition and acceptance of the rights of people with disabilities;

b) any parts of the legislation which restrict competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation can be achieved only through restricting competition;

c) without limiting the matters that may be taken into account, in assessing the matters in (a) and (b), regard should be had, where relevant, to:

    i. social welfare and equity considerations, including those relating to people with disabilities, including community service obligations;

ii. government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity;

iii. economic and regional development, including employment and investment growth;

iv. the interests of consumers generally or of a class of consumers (including people with disabilities);

v. the competitiveness of Australian business, including small business;

vi. the efficient allocation of resources; and

vii. government legislation and policies relating to ecologically sustainable development.

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

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

3. In making assessments in relation to the matters in (2) the Productivity Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement and the Government's guidelines on regulation impact statements. The Report of the Productivity Commission should:

a) identify the nature and magnitude of the social (including social welfare, access and equity matters), environmental or other economic problems that the legislation seeks to address;

b) ascertain whether the objectives of the DDA are being met, including through analysis and, as far as reasonably practical, quantification of the benefits, costs and overall effects of the legislation upon people with disabilities, in particular its effectiveness in eliminating, as far as possible, discrimination on the ground of disability, ensuring equality between people with disabilities and others in the community, and promoting recognition and acceptance of the rights of people with disabilities;

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

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

e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the alternatives identified in (d), including on, or in relation to, people with disabilities;

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

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

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

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

4. In undertaking the review, the Productivity Commission is to advertise nationally, consult with State and Territory Governments, key interest groups and affected parties (in particular, people with disabilities and their representatives) invite submissions from the public, and publish a draft report. To facilitate participation by people with disabilities, the Productivity Commission is to ensure that all hearings are held at accessible venues and that documentation and information distributed during the consultative and review processes including the draft and final reports, are available in accessible formats.

5. In undertaking the review and preparing its final report and associated recommendations, the Productivity Commission is to note the Government's intention to release the report and announce its responses to the review recommendations as soon as possible, with the response to be prepared by appropriate Ministers, including the Attorney-General.

IAN CAMPBELL