

11 Fair trading legislation and consumer protection legislation

States and Territories have enacted a range of legislation dealing with fair trading and consumer protection issues. This legislation regulates aspects of business conduct, including advertising, dealings with customers and the provision of information. It falls into three broad categories: general fair trading legislation, which includes governments' fair trading Acts; legislation regulating the provision of consumer credit, including the Consumer Credit Code; and trade measurement legislation, which deals with the measurement of goods for sale. Attempts have been made to achieve national uniformity in each of these areas, but variation across jurisdictions remains.

A subset of legislation aimed at protecting consumers deals with the licensing of occupations and the review and reform of this legislation is discussed in chapter 8.

Legislative restrictions on competition

Fair trading and consumer protection legislation imposes a wide range of restrictions on business conduct. Fair trading Acts, for example, regulate business conduct by prohibiting: misleading or deceptive conduct; the employment of harassment or coercion to win sales; and certain types of sales technique (such as pyramid and referral selling). These Acts and other related legislation also impose miscellaneous restrictions, including price controls, mandatory cooling-off periods, the requirement to disclose products from which goods are made, the requirement to provide warranties, the banning of unsafe goods, and quality standards.

Regulation relating to the provision of consumer credit generally involves licensing requirements and restrictions on the conduct of credit providers. Such restrictions may take the form of documentary and disclosure requirements, provision for change in contractual arrangements, limits on commissions and the types of product that may be offered, and restrictions on advertising and methods of sale.

Legislation dealing with trade measurement imposes restrictions on the method of sale of certain goods. These restrictions include labelling and

licensing requirements, restrictions on the units of measurement in which certain goods may be sold, restrictions on the types of measuring instrument that businesses may use, and requirements relating to the verification, certification and servicing of measuring instruments.

Regulating in the public interest

Fair trading and consumer protection legislation aims to protect consumers by addressing market failure, such as information asymmetries between businesses and consumers, which may lead to some businesses gaining an unfair advantage. The legislation may encourage competition, for example by promoting consumer confidence. It may also impose some costs, however. In particular, legislative restrictions on business activities may, by restricting market entry and competitive conduct, result in increased compliance costs for businesses and have an impact on product innovation and consumer choice.

Regulating to protect consumers' interests requires governments to balance these considerations. In assessing jurisdictions' compliance with the National Competition Policy (NCP), the National Competition Council looks for appropriate regulatory outcomes. In the Council's view, such outcomes require restrictions on business activity to be as closely targeted to market failure as possible, to be proportionate to the market failure's potential detriment, and to be the least restrictive means available of achieving the regulatory objectives.

The Council has used these principles to assess jurisdictions' review and reform activity against obligations under clause 5 of the Competition Principles Agreement (CPA). Where restrictions in legislation generally reflect this framework, the Council has assessed the jurisdiction as meeting its CPA obligations in this area. Where legislation contains restrictions on competition in addition to those consistent with the principles of effective regulation, the Council's assessment accounts for the relevant government's public benefit arguments.

Regarding fair trading Acts, the Council considers that they do not require NCP review where they essentially mirror part V of the *Trade Practices Act 1974* (the TPA). The Council has taken this view because the consumer protection provisions contained in the TPA are pro-competitive. The Council has considered all other restrictions in these Acts against the general principles for appropriate regulation.

Review and reform activity

Fair trading legislation

Commonwealth, State and Territory consumer affairs Ministers agreed in 1983 to adopt nationally uniform consumer protection legislation, with the objective of promoting efficiency and reducing compliance costs. The model chosen for the uniform scheme was the consumer protection provisions (part V) of the TPA, which contains general prohibitions against misleading or deceptive conduct in trade or commerce, as well as more specific prohibited practices. Each jurisdiction adopted these provisions in mirror legislation.

Fair Trading Acts

In the 2001 NCP assessment, the Council assessed Victoria and Tasmania as having met their CPA obligations in regard their fair trading Acts.¹

New South Wales

The final report on the combined review of the *Fair Trading Act 1987* and *Door to Door Sales Act 1967* has been prepared and soon will be submitted for Government consideration. New South Wales has advised the Council that a number of consumer protection provisions in the existing Fair Trading Act mirror those of the TPA and thus are in the public interest. It anticipates that any legislative amendments resulting from the review will be introduced into Parliament in the second half of 2002. Given that New South Wales is progressing reform in this area, the Council will make a final assessment in 2003.

Queensland

Queensland's review of the *Fair Trading Act 1989* is under way and was expected to be completed by mid-2002. Given that the implementation of any reforms will extend beyond this date, the Council will make its final assessment in 2003.

¹ The Council's assessment of Tasmania covered all provisions except those applying to motor vehicle dealers, which are discussed in chapter 8.

Western Australia

Western Australia is reviewing the *Fair Trading Act 1987* and the *Consumer Affairs Act 1971* as part of the State's consumer justice strategy. The strategy renews emphasis on the investigation of complaints and the imposition of sanctions on those who contravene acceptable standards. The review is not scheduled for completion until December 2002. The review will include an examination of any restrictions on competition to ensure they are in the public interest. The Council will make a final assessment in 2003.

South Australia

South Australia did not include the *Fair Trading Act 1987* on its original legislation review schedule. In response to Council comments in the 2002 NCP assessment, the Government has requested that the relevant agency ensure that any provisions beyond those that duplicate parts of the TPA are reviewed according to CPA principles. This review may not be achieved before 30 June 2002. The Council acknowledges that governments may need time beyond the Council of Australian Governments (CoAG) target to complete reviews of legislation that is added to the program, so it will finalise its assessment of CPA compliance on a case basis in 2003.

The ACT

The ACT completed a departmental review of its *Fair Trading Act 1992* in 2001. The review found that the Act is pro-competition. Minor amendments were made in the *Fair Trading (Amendment) Act 2001*. The Council assesses the ACT as having met its CPA obligations in this area.

The Northern Territory

The Northern Territory conducted a review of the *Consumer Affairs and Fair Trading Act*, which recommended retention of restrictions relating to product safety and product information and door-to-door trading (CIE 2000b). The then Government approved the review's recommendations except in relation to recommended changes to the fair reporting and motor vehicle dealer provisions. (The recommendations relating to motor vehicle dealers are discussed in chapter 8.)

The Act's fair reporting provisions include requiring traders to notify consumers where a reporting agency report has been used, and requiring reporting agencies to disclose information relating to a person when requested by that person. The review determined that these provisions potentially restrict competition through their impact on the costs of reporting agencies. The review found that the benefits of the provisions have not been demonstrated and that the provisions should be repealed. The review, however, recommended that repeal be deferred pending resolution of new national issues relating to residential tenancy data bases. Given that the

provisions entitle consumers to both credit and noncredit information held about them, and that this information can be accessed with little cost to business, the then Northern Territory Government argued that the benefits of the provisions outweighed the costs.

The current Government introduced amendments to the Fair Trading Act into Parliament in July 2002 which give effect to the review recommendations. The Government accepted the recommendation to defer repeal of the fair reporting provisions and stated that it would further consider the issue. The Council assesses the Northern Territory as having met its CPA clause 5 obligations in this area.

Other fair trading legislation

In the 2001 NCP assessment, the Council assessed governments as having met their CPA clause 5 obligations in relation to the following legislation:

- New South Wales: *Business Licences Act 1990*;
- Victoria: *Funerals (Pre-Paid Money) Act 1993* and *The Retirement Villages Act 1986*;
- South Australia: *Prices Act 1948*;
- Tasmania: *Flammable Clothing Act 1973*, *Goods (Trade Descriptions) Act 1971* and *Mock Auctions Act 1973*; and
- The ACT: *Law Reform (Manufacturer's Warranties) Act 1977* and *Law Reform (Misrepresentation) Act 1977*.

The following sections discuss governments' progress in reviewing and reforming miscellaneous fair trading legislation.

New South Wales

New South Wales completed a review of the *Prices Regulation Act 1948* in 1996. The Government approved the review's recommendation that prices regulation powers be transferred to the Independent Pricing and Regulatory Tribunal. The Prices Commission was subsequently abolished and the amendment giving effect to the proposed transfer of powers was enacted in mid-2000.

New South Wales completed a review of the *Retirement Villages Act 1989* in 1998. The Government approved and publicly released the review's final report in late 1998. The review report recommended measures to address industry practices identified as unfair and inequitable. The new *Retirement Villages Act 1999*, which is consistent with the review's recommendations, commenced on 1 July 2000 replacing the earlier Act.

The Council assesses New South Wales as having met its CPA clause 5 obligations for these two Acts.

The final report on the review of the *Funeral Funds Act 1979* was completed in November 2001. The review found that the impact of the legislation on competition was not significant. The proposed new legislation will remove restrictions on funeral directors, however, where these are not justified on public benefit grounds. These restrictions cover:

- minimum and maximum numbers of fund directors and trustees;
- the nomenclature of funeral funds; and
- a cap on management fees and benefits paid.

The final report will soon be publicly released. The Government approved the review's recommendations in February 2002, as well as the preparation of an exposure Bill to facilitate further public consultation. The Council will make a final assessment in 2003.

Queensland

The Government reviewed the *Retirement Villages Act 1988* as part of developing replacement legislation namely, the Retirement Villages Bill 1999. Regulatory alternatives considered by the review comprised deregulation and a mandatory code of practice. The review identified several legislative restrictions on competition but concluded that the benefits of the restrictions outweighed the costs, principally by addressing the information asymmetry that faces retirees, who are a vulnerable class of consumers. Minor amendments were made to the Bill following its introduction to Parliament and these were also assessed for competition impacts. Queensland reviewed its sale of goods legislation in 2001, finding that the Acts did not restrict competition. The Council assesses Queensland as having met its CPA obligations for legislation governing retirement villages and the sale of goods.

A combined review of the *Sale of Goods Act 1896* and the *Sale of Goods (Vienna Convention) Act 1986* found they did not restrict competition. The Acts have been retained without reform. The Council assesses Queensland as meeting its CPA clause 5 obligations in relation to these Acts

The *Profiteering Prevention Act 1948* introduced powers to control prices in the context of severe shortages of goods and services following World War II. The review of the Act recommended its repeal. Cabinet has approved the preparation of a Bill to repeal the Act and the Government anticipates introducing the Bill in mid-2002. A review of the *Funeral Benefit Business Act 1982* is under way. The Council will make a final assessment in 2003.

Western Australia

A review of the *Retirement Villages Act 1992* was completed in 2002. The review group produced a discussion paper and obtained responses from retirement village residents and associations. In May 2002 the Government endorsed the review's recommendations to amend:

- restrictions on the use of retirement village land by establishing a simpler and more cost-effective process for terminating a village scheme and removing a memorial from the whole or a part of the village land;
- the Code of Fair Practice for Retirement Villages, by incorporating the existing code and Act into a single Act; and
- restrictions on the marketing and price determination rights of residents, by providing residents with the rights to be involved in the marketing of a unit, to receive monthly marketing reports and be involved in price determination.

The Department of Consumer and Employment Protection is preparing the relevant amendments, which means that Western Australia is nearing completion of its review and reform activity for this legislation. The Council will make its final assessment in 2003.

Tasmania

Tasmania completed a review of the *Door to Door Trading Act 1986*. According to the State's 2001 NCP annual report, the review found that restrictions in the Act are justified in the public interest. The Council assesses Tasmania as having met its CPA review and reform obligations for this legislation.

The Northern Territory

The Northern Territory conducted a review of the *Prices Regulation Act*. The Centre for International Economics undertook the review, recommending that the Act's powers to set maximum prices be exercised only in times of natural disaster, that the Act specifies objectives for the regulation and that the Government regulate monopoly behaviour, if necessary, through separate legislation (CIE 2000f). The then Government agreed to the review's recommendations. The current Government was expected to announce its response in mid-2002. The Council will make its final assessment in 2003.

The review of the *Retirement Villages Act* was completed in 2002, finding that the Act's competition restrictions are in the public interest. The Government has endorsed the review's findings. The Council assesses the Northern Territory as having met its CPA obligations for this legislation.

Table 11.1 outlines the progress of jurisdictions' review and reform of their fair trading Acts. Jurisdictions also identified for review a range of miscellaneous fair trading legislation. Table 11.2 outlines jurisdictions' progress with these reviews.

Consumer credit legislation

In 1993 State and Territory governments entered into the Australian Uniform Credit Laws Agreement, which provides for the adoption of a national Consumer Credit Code. The code, which came into effect in November 1996, replaced various State and Territory statutes governing credit, money lending and aspects of hire-purchase.

The code was developed to be applied equally to all forms of consumer lending and to all credit providers in Australia, without restricting product flexibility and consumer choice. It applies rules that regulate credit providers' conduct throughout the life of a loan, generally relying on competitive forces to provide price restraint but providing redress mechanisms for borrowers if credit providers fail to comply with the legislation. Types of credit covered by the code include personal loans, credit cards, overdrafts, housing loans and the hire of goods.

The code is enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania have enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia has enacted alternative consistent legislation, which will require amendment by the Western Australian Parliament to remain consistent when the code is amended. Tasmania has enacted a modified template system.

State and Territory governments are jointly undertaking an NCP review of the Consumer Credit Code legislation. In addition to this review, several jurisdictions have identified other consumer credit-related legislation for review, possible review or amendment. Table 11.3 outlines the progress of jurisdictions' review of this legislation.

NCP review of the Consumer Credit Code

A draft report of the national NCP review of the Consumer Credit Code was released for public consultation in December 2001 (Uniform Consumer Credit Code Management Committee 2002). The review was undertaken by an independent consultant steered by a working party comprising representatives from each participating jurisdiction.

The key recommendations of the draft review were:

- to maintain the current provisions of the code and review its definitions to bring sale of land, conditional sale agreements, tiny terms contracts and solicitor lending within the scope of the code; and
- to enhance the code's disclosure requirements.

In 2002 the review report was finalised, following the receipt of public comments and examination by CoAG's Committee on Regulatory Reform to ensure NCP review requirements had been met. The report was then forwarded to the Ministerial Council on Consumer Affairs for consideration and in July 2002, Ministers agreed out of session to adopt the recommendations. When all participating jurisdictions have formally endorsed the report, the Ministerial council will refer it to the Uniform Consumer Credit Code Management Committee for implementation.

The NCP review follows a post-implementation review of the code, which was completed in December 1999. The post-implementation report made recommendations for changing the legislation, some of which may have an impact on competition. The Council understands that the NCP review addressed those recommendations and that the Ministerial council considered the two reports together.

NCP reviews of related legislation

In the 2001 NCP assessment, the Council assessed jurisdictions as having met their CPA obligations in relation to the following legislation:

Victoria: *Credit Administration Act 1984*;

Tasmania: *Hire Purchase Act 1959* and *Lending of Money Act 1915*;

ACT: *Credit Act 1985*; and

Northern Territory: *Consumer Affairs and Fair Trading Act*.

The following sections discuss governments' progress in reviewing and reforming miscellaneous consumer credit legislation.

Victoria

Victoria extended certain provisions of its *Hire Purchase Act 1959* — by means of the *Hire Purchase (Amendment) Act 1997* and the *Hire Purchase (Amendment) Act 2000* — until 30 June 2003. These provisions allow the court to re-open hire-purchase agreements and, under certain circumstances, to order the return of goods repossessed from a farmer. The extensions allow time to ensure the unconscionable conduct provisions of the TPA prove adequate to protect farmers and to develop a more comprehensive policy in relation to finance in the rural sector.

Victoria considered that the public interest — providing rural producers with some basic safeguards against insolvency caused by aggressive enforcement of hire-purchase contracts — outweighs the likely costs of preserving this minimal level of market intervention. Extending the application of the Hire Purchase Act provisions again, to post 1 July 2003 contracts, would require further legislation, which would be subject to gatekeeper review. Victoria has provided a public benefit case for restrictions retained in the legislation, so the Council assesses Victoria as having met its CPA clause 5 obligations in this area.

Queensland

After completing reviews of the *Credit Act 1987* and the *Hire Purchase Act 1959*, Queensland indicated that it intends to repeal both Acts. The protection afforded to farmers under the Hire Purchase Act will be continued via amendments to the *Credit (Rural Finance) Act 1996*. The proposed amendments have been found to be in the public interest by a separate review.

Queensland has added the Credit (Rural Finance) Act to its legislation review program because the Act has a relationship with other Acts on the review program. The Act provides for the issue of default notices and relieving orders to protect farmers against the arbitrary enforcement of mortgages over essential farming equipment. Submissions on a publicly released draft review report closed in January 2002 and the review is being finalised.

Queensland is nearing completion of its review and reform activity in this area, so the Council will make a final assessment in 2003.

Western Australia

Western Australia completed departmental reviews of the *Credit (Administration) Act 1984* and the *Hire-Purchase Act 1959*. The review of the Credit (Administration) Act found that the Act's licensing requirement does not provide a net public benefit given safeguards housed in other consumer protection legislation, but that the Act's disciplinary provisions have a public benefit. The review therefore recommended repealing the licensing requirement and the provisions flowing from it, but retaining the disciplinary provisions. The Western Australian Government endorsed the review's recommendations and is drafting corresponding legislative amendments.

The review of the Hire-Purchase Act found that the introduction of the Consumer Credit Code had made most of the Act's provisions redundant. It found that three provisions, however, are justified on public interest grounds: the requirement for credit providers to refund any surplus amount following repossession of goods; the court's power to re-open 'harsh or unconscionable' hire-purchase arrangements; and restrictions on credit providers' ability to repossess farming goods. The review argued that the impact of these restrictions on the cost of providing hire-purchase arrangements is likely to

be minimal. The Western Australian Government has endorsed the review's recommendations, and amendments to the legislation are contained in the Acts Amendment and Repeal (Competition Policy) Bill scheduled for the autumn 2002 Parliamentary session. Western Australia is nearing completion of its review and reform activity for this legislation, so the Council will make its final assessment in 2003.

The ACT

A departmental review of the *Consumer Credit (Administration) Act 1996* concluded in September 2001 that the market suffers from well documented market failures that expose consumers to high levels of financial risk and an inability to discriminate objectively among the providers of services in terms of quality and cost of service. The review recognised the need for government intervention to protect the public interest against potential market failures, and the Government has therefore retained the Act. The Council assesses the ACT as having met its CPA clause 5 obligations in this area.

Trade measurement legislation

Each State and Territory has legislation that regulates weighing and measuring instruments used in trade and provisions for prepackaged and nonprepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and Territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs. Participating jurisdictions have since progressively enacted the uniform legislation. The legislation places the onus on owners to ensure instruments are of an approved type and maintained in an accurate condition.

Governments have identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation is being undertaken. Some jurisdictions have indicated that they will review the Acts that administer the national scheme, in addition to those Acts that apply it.

Victoria's 2001 NCP annual report noted that a scoping paper for the national NCP review of the scheme concluded that restrictions on the method of sale (relating to meat, beer and spirits, and prepackaged goods) appear to have little, if any, adverse impact on competition but provide benefits to consumers. The paper raised concerns, however, regarding the costs of restrictions on the sale of nonprepacked meat. In contrast, the paper found that other restrictions on competition impose few costs while potentially generating widespread and significant benefits. These restrictions relate to the oversight of measurement standards, the prohibition of end-and-end weighing at public weighbridges and the licensing of services organisations and public weighbridges.

A draft report on nonprepacked meat was circulated to jurisdictions during February 2002 and the review's working group is now finalising the report. The Standing Committee of Officials on Consumer Affairs will need to consider the report before it is passed to the Ministerial Council on Consumer Affairs.

Queensland's *Trade Measurement (Administration) Act 1990* is Queensland specific and contains provisions relating to offences, appeals and licensing. As the outcome of the national review will have no impact on this Act, the State's NCP review was able to be completed. The review found that the Act does not restrict competition and recommended that it be retained without change. The review findings were endorsed by the Government in February 2002. The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

The Northern Territory and the ACT have conducted internal reviews of their trade measurement (administration) Acts, finding that the Acts do not contain anticompetitive restrictions. The Northern Territory has undertaken to amend its Act if this is recommended by the national review. South Australia has indicated that it will review the provisions of its trade measurement (administration) Act which apply specifically to South Australia when the national review is completed. Western Australia is drafting new legislation to replace the Weights and Measures Act. The new legislation will apply the uniform national legislation and thereby contribute to national consistency. The Council will make its final assessment in 2003.

Table 11.4 outlines the progress of jurisdictions' progress with review and reform of their trade measurement legislation.

Table 11.1: Review and reform of fair trading Acts

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Fair Trading Act 1987</i>	Regulation of the supply, advertising and distribution of goods and services and the disposal of interests in land	Combined review with <i>Door to Door Sales Act 1967</i> is under way. Terms of reference were approved in 1997 and a steering committee was formed in 1998. Issues paper was released in August 2000, followed by public consultation. Final report has been prepared and will soon be submitted to the Government.		Council to finalise assessment in 2003.
Victoria	<i>Fair Trading Act 1999</i>	Requirements imposed on 'Off business premises sales' including a mandatory five-day cooling-off period for contact sales.	Act was assessed against NCP principles at its introduction. Assessment recommended retaining restrictions on the grounds that they are the least restrictive means of achieving the Act's objectives, so are in the public interest.	Restrictive provisions were retained.	Meets CPA obligations (June 2001).
Queensland	<i>Fair Trading Act 1989</i>	Quality/technical standards, business conduct restrictions, measures that confer a benefit	Review is under way and was expected to be completed in mid-2002.		Council to finalise assessment in 2003.
Western Australia	<i>Fair Trading Act 1987</i>	Regulation of the supply, advertising and distribution of goods and services	Review of the Act and the <i>Consumer Affairs Act 1971</i> is under way and is scheduled for completion in December 2002.		Council to finalise assessment in 2003.
South Australia	<i>Fair Trading Act 1987</i>		Act was not included in the legislation review schedule. South Australia will undertake a review, but had not done so before June 2002.		Council to finalise assessment in 2003.

(continued)

Table 11.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	<i>Fair Trading Act 1990</i> Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996	Code of practice requires manufacturers to provide warranties for motor vehicles and to establish a system for dealing with customer complaints	Minor review of code of practice was completed. Act assessed as not restricting competition.	Restrictive provisions were retained.	Meets CPA obligations (June 2001) in relation to nonmotor vehicle dealer provisions. Motor vehicle dealer provisions are discussed in chapter 8.
ACT	<i>Fair Trading Act 1992</i>	Regulation of the supply, advertising and distribution of goods and services	Intradepartmental review completed in 2001 covering the Fair Trading Act, the <i>Door-to-Door Trading Act 1991</i> , the <i>Fair Trading (Consumer Affairs) Act 1973</i> , the <i>Lay-by Sales Agreements Act 1963</i> and the <i>Sale of Goods Act 1954</i> . The Fair Trading Act was assessed as not restricting competition.	Act was retained without reform.	Meets CPA obligations (June 2002).
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Sundry provisions, including the regulation of advertising and the banning of potentially unsafe goods. Requirement that traders notify consumers where a reporting agency report has been used, and that reporting agencies disclose information relating to a person when requested by that person	The review found that the benefits of the fair reporting provisions have not been demonstrated and that the provisions should be repealed. The review, however, recommended that their repeal be deferred pending resolution of new national issues relating to residential tenancy data bases.	The Government introduced amendments to the Act into Parliament in July 2002 that implement the review recommendations. The Government accepted the recommendation to defer repeal of the fair reporting provisions and stated that it would further consider the issue. Motor vehicle dealer provisions are discussed in chapter 8.	Meets CPA obligations (June 2002).

Table 11.2: Review and reform of other fair trading legislation

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Business Licences Act 1990</i>	Licensing requirements	Review was completed in 1998.	This Act was repealed by the <i>Business Licences Repeal and Miscellaneous Amendments Act 2001</i> .	Meets CPA obligations (June 2001).
	<i>Funeral Funds Act 1979</i>	Controls and regulations on contributory and pre-arranged funeral funds	Review was completed in 2001. It found that the impact of the legislation on competition was not significant, but recommended the removal of some restrictions on funeral funds. The Government is preparing an exposure Bill for public discussion.		Council to finalise assessment in 2003.
	<i>Prices Regulation Act 1948</i>	Regulation of prices and rates for certain goods and services	Review was completed in 1996.	Prices Commission was abolished and prices regulation powers were transferred to the Independent Pricing and Regulatory Tribunal.	Meets CPA obligations (June 2002).
	<i>Retirement Villages Act 1989</i>	Regulates the termination of occupation rights of residents and confers jurisdiction over certain matters to the Residential Tenancies Tribunal	Review was completed in 2001.	Act was repealed. <i>Retirement Villages Act 1999</i> was introduced, retaining certain requirements for terminating the occupation rights of residents.	Meets CPA obligations (June 2002).

(continued)

Table 11.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Funerals (Pre-Paid Money) Act 1993</i>		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001).
	<i>Retirement Villages Act 1986</i>		Scoping study showed that the Act does not restrict competition.		Meets CPA obligations (June 2001).
Queensland	<i>Funeral Benefit Business Act 1982</i>	Limitations on the registration of corporations, business conduct requirements	Review is under way.		Council to finalise assessment in 2003.
	<i>Profiteering Prevention Act 1948</i>	Price controls, restrictions on business conduct	Reduced NCP review was completed. Repeal of the legislation was recommended because it lacks contemporary relevance.	Legislation is expected to be repealed in mid 2002.	Council to finalise assessment in 2003.
	<i>Retirement Villages Act 1988</i>	Entry requirements, statutory charges, reduced requirements for charitable organisations	Reduced NCP review was completed in 1998. New Bill was assessed against NCP obligations.	New Bill was passed in 1999, retaining some restrictions on competition.	Meets CPA obligations (June 2002).
	<i>Sales of Goods Act 1896</i> <i>Sale of Goods (Vienna Convention) Act 1986.</i>	Stipulations relating to the sale or purchase of goods, affecting the rights and remedies of buyers and sellers	Review was completed in 2001. No competition restrictions were identified.	Acts were retained without reform.	Meets CPA obligations (June 2002).

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Table 11.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Retirement Villages Act 1992</i>	Restrictions on business conduct	Departmental review was completed in 2002. It recommended: changing restrictions on the use of retirement village land; incorporating the Code of Fair Practice for Retirement Villages into the Act; and changing restrictions on residents marketing and price determination rights.	Amendments are being prepared.	Council to finalise assessment in 2003.
South Australia	<i>Prices Act 1948</i>	Price controls, restrictions on business conduct	Review completed, recommending the removal of a number of restrictive provisions but the retention of price controls for infant foods, returns of unsold bread, towing, recovery, storage and quoting for repair of motor vehicles and the carriage of freight to Kangaroo Island.	The Government enacted amendments in line with recommendations in 2000.	Meets CPA obligations (June 2001).
Tasmania	<i>Door to Door Trading Act 1986</i>	Definition of a prescribed contract, prohibition of contractual terms, requirement for certain information to be incorporated under prescribed contracts, limitation on the hours in which a dealer may call on a person	Minor review of the Act was completed. Restrictive provisions were justified as being in the public interest.	Restrictive provisions were retained.	Meets CPA obligations (June 2002).
	<i>Flammable Clothing Act 1973</i>	Requirement to mark or label prescribed clothing (children's nightwear) with the flammability of the garment	Minor review of the Act was completed. Restrictive provision was justified as being in the public interest.	Restrictive provision was retained.	Meets CPA obligations (June 2001).

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Table 11.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
	<i>Goods (Trade Descriptions) Act 1971</i>	Requirement for manufacturers to disclose the materials from which textile products are made, provisions relating to safety footwear	Minor review of the Act was completed. Requirement relating to textile products was justified as being in the public interest.	Restrictive provision relating to textile products was retained. New regulations were made to replace safety footwear provisions.	Meets CPA obligations (June 2001).
	<i>Mock Auctions Act 1973</i>	Prohibition on auctions where items are sold at a price lower than the highest bid		Act was repealed.	Meets CPA obligations (June 2001).
ACT	<i>Law Reform (Manufacturers Warranties) Act 1977</i>		Act was assessed as not restricting competition and was removed from the NCP review timetable.	Act repealed by the Fair Trading (Amendment) Bill 2001 because it duplicates more extensive provisions in the TPA.	Meets CPA obligations (June 2001).
	<i>Law Reform (Misrepresentation) Act 1977</i>		Act was assessed as not restricting competition and was removed from the NCP review timetable.		Meets CPA obligations (June 2001).
Northern Territory	<i>Prices Regulation Act</i>	Price controls, restrictions on business conduct	Review was completed, recommending the exercise of restrictions only at times of natural disaster, the specification of objectives and the regulation of monopoly behaviour under separate legislation.		Council to finalise assessment in 2003.
	<i>Retirement Villages Act</i>	Regulation of the operation of retirement villages, the court's powers in respect of certain matters relating to retirement villages	Review was completed in 2002. The restrictions on competition contained in the Act were found to be in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2001).

Table 11.3: Review and reform of legislation regulating consumer credit

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
National	<i>Review of Consumer Credit Code</i>	Licensing requirements, restrictions on the conduct of credit providers	Review report was completed in 2002 and considered by CoAG's Committee on Regulatory Reform to ensure NCP review requirements had been met. The report has been forwarded to the Ministerial Council on Consumer Affairs for response by participating jurisdictions.		Council to finalise assessment in 2003.
Victoria	<i>Credit (Administration) Act 1984</i>		Scoping study showed that the legislation does not restrict competition.		Meets CPA obligations (June 2001).
	<i>Hire Purchase (Amendment) Act 1997</i>	Retention of the court's ability to re-open hire-purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is benefit in using the restrictions to address rural sector difficulties in relation to hire-purchase, while a more comprehensive policy is developed.	Restrictive provisions were retained.	Meets CPA obligations (June 2002).
	<i>Hire Purchase (Amendment) Act 2000</i>	Retention of the court's ability to reopen hire-purchase agreements and order the return of goods repossessed from a farmer under certain circumstances	Victoria argued that there is continued benefit in the restrictions because further work is required to develop a comprehensive policy.	Restrictive provisions were retained.	Meets CPA obligations (June 2002).
Queensland	<i>Credit Act 1987</i>	Restrictions on business conduct	Review of this Act and regulation is being carried out at the same time as the national review of the Consumer Credit Code but under a separate process. Review was due for completion in the third quarter of 2001.	Act is to be repealed.	Council to finalise assessment in 2003.

(continued)

Table 11.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
	<i>Credit (Rural Finance) Act 1996</i>	Restrictions on the enforcement of mortgages over essential farm equipment	Submissions on a publicly released draft report closed in January 2002 and the review is being finalised.		Council to finalise assessment in 2003.
	<i>Hire Purchase Act 1959</i>	Restrictions on business conduct	Review was completed in 2001. The protection currently afforded to farmers under the Hire Purchase Act, will be continued via amendments to the Credit (Rural Finance) Act. The proposed amendments have been subject to a separate review of their public benefit	Act is to be repealed.	Council to finalise assessment in 2003.
Western Australia	<i>Credit (Administration) Act 1984</i>	Licensing requirements, restrictions on the conduct of credit providers	Departmental review was completed, recommending the repeal of licensing requirements and related provisions but retention of disciplinary provisions on public interest grounds.	The Government agreed to the review recommendations and is drafting legislative amendments.	Council to finalise assessment in 2003.
	<i>Hire Purchase Act 1959</i>	Restrictions relating to surplus from sale of repossessed goods, equitable relief and farm goods purchases	Departmental review was completed, recommending the removal of a number of restrictions but the retention (on public interest grounds) of three provisions aimed at protecting farmers and small businesses.	The Government agreed to the review recommendations and has introduced amending legislation to Parliament.	Council to finalise assessment in 2003.
Tasmania	<i>Hire-Purchase Act 1959</i>	Requirements relating to the form and contents of hire-purchase contracts		Act was repealed.	Meets CPA obligations (June 2001).
	<i>Lending of Money Act 1915</i>	Requirement that money lenders be registered		Act was repealed.	Meets CPA obligations (June 2001).

(continued)

Table 11.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT	<i>Consumer Credit (Administration) Act 1996</i>	Registration and conduct requirements	Departmental review was completed. Restrictions were found to be in the public interest.	Act was retained without reform	Meets CPA obligations (June 2002).
	<i>Credit Act 1985</i>		Act was substantially repealed. Remaining provisions were assessed as not restricting competition.		Meets CPA obligations (June 2001).
Northern Territory	<i>Consumer Affairs and Fair Trading Act</i>	Negative licensing requirements, requirement for credit providers to abide by the Consumer Credit Code and to act properly, competently and fairly	Review was completed, recommending retention of the requirement for credit providers to act properly, competently and fairly. The national review is considering the requirement to abide by the Consumer Credit Code in the national review.	The Government agreed to the review recommendations.	Meets CPA obligations (June 2001).

Table 11.4: Review and reform of legislation regulating trade measurement

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
National (except Western Australia)	Review of trade measurement legislation	Restrictions on the method of sale of certain goods	Review is under way. Review report has been prepared and is under consideration by the steering committee. Report is to be considered by relevant official bodies before being forwarded to the Ministerial Council on Consumer Affairs for consideration and response.		Council to finalise assessment in 2003.
Queensland	<i>Trade Measurement (Administration) Act 1990</i>		Review was completed in 2002. The review found the Act did not restrict competition.	Act was retained.	Meets CPA obligations (June 2001).
Western Australia	<i>Weights and Measures Act 1915</i>	Restrictions on the method of sale of certain goods	The Government is currently drafting new legislation to replace the Weights and Measures Act. The new legislation will apply the uniform national legislation.		
South Australia	<i>Trade Measurement Administration Act 1993</i>		Review and reform are contingent on the outcome of national review.		Council to finalise assessment in 2003.
ACT	<i>Trade Measurement (Administration) Act 1991</i>		Internal review found that the Act does not contain anticompetitive restrictions.		Council to finalise assessment in 2003.
Northern Territory	<i>Trade Measurement (Administration) Act</i>		Internal review found that the Act does not contain anticompetitive restrictions.		Council to finalise assessment in 2003.