19 National legislation reviews

The Competition Principles Agreement (CPA) provides, where a review raises issues with a national dimension or effect on competition (or both), that the government responsible for the review will consider whether the review should be undertaken on a national (interjurisdictional) basis. If a government considers a national approach to be appropriate, then it must consult other interested governments before determining the terms of reference and the appropriate body to conduct the review. This chapter discusses legislation review and reform activity that is being conducted on an interjurisdictional basis or that presents issues for which all governments have a collective responsibility to achieve compliance with National Competition Policy (NCP) obligations.

A number of national reviews have taken several years to be completed, reflecting protracted interjurisdictional consultation in many cases, and complexity of the issues sometimes. In some cases, such as the reviews of agricultural and veterinary chemicals and drugs and poisons, jurisdictions' interests are represented by more than one portfolio (for example, primary industries and health) adding to the time taken for agreement on approaches to regulation. Further, some reviews involve a consideration of issues that will evolve over time—the National Competition Council recognises, for example, that there are several 'layers' to radiation protection measures, and that review and reform activity in this area may never be complete.

At the same time, the conclusion of some national review processes has been protracted by the slowness of one or two jurisdictions in signing off on reforms to which all other parties have agreed, or in implementing agreed legislative changes, or by apparently minor issues receiving extended attention at the expense of progressing the reform package as a whole. The Council encourages governments to address these areas so outstanding national reviews can be completed to the benefit of the whole community.

The 2004 NCP assessment indicated that work was still to be done in most of the reviews found to be incomplete by the 2003 NCP assessment. The following sections summarise the status of the review and reform activity for each of the national reviews, and indicate a good deal of unfinished work.

Review of the *Agricultural and Veterinary Chemicals Code Act 1994* and related Acts

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority for Agricultural and Veterinary Chemicals) administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the Agricultural and Veterinary Chemicals Code Act. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

The NCP national review activity covers legislation that created the National Registration Scheme for Agricultural and Veterinary Chemicals and legislation controlling the use of agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. 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.

National Chemical Registration Scheme

The Victorian Minister for Agriculture and Resources commissioned the review on behalf of Australian, state and territory ministers for agriculture/primary industries, following a decision by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ). The final review report was presented on 13 January 1999. On 3 March 1999, the Standing Committee on Agricultural Resource Management (SCARM) publicly released the report and established an interjurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group to prepare an intergovernmental response to the report's recommendations.

SCARM/ARMCANZ endorsed the intergovernmental response to the review in 2000. The Council of Australian Governments (COAG) Committee on Regulatory Reform cleared the response, which accepted some recommendations and established interjurisdictional working groups and task groups to consider the other issues. A task force, for example, examined review recommendations on the regulation of low risk chemicals, and the Australian Government subsequently introduced the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002. This legislation was passed by the Australian Parliament in February 2003 and came into

operation in October 2003. State and territory legislation automatically mirrored the amendments.

Three working groups examined the review recommendations on manufacturing licensing, cost recovery by the Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority for Agricultural and Veterinary Chemicals) and alternative assessment providers respectively. These working groups have finalised their reports. The Primary Industries Standing Committee (formerly SCARM), which serves the Primary Industries Ministerial Council, endorsed the reports of the latter two working groups in September 2002. These reports supported the review recommendations regarding cost recovery by the Australian Pesticides and Veterinary Medicines Authority, and also that the authority should broaden the range of bodies from which it contracts technical assessment services. The Primary Industries Standing Committee developed a revised fee and levy structure for the authority, and the Australian Government had been expected to introduce a Bill to amend the Agricultural and Veterinary Chemicals Code Act in the autumn 2004 session of Australian Parliament. State and territory mirror legislation would automatically reflect these amendments. However, the public consultation process gave rise to several issues with the cost recovery model, which were addressed through further consultation and refining of the amending legislation. The government issued a draft cost recovery impact statement in November 2004, and subsequent comments from stakeholders did not result in any significant changes to the cost recovery model described in the statement.

The Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005 was given royal assent on 1 April 2005. The new application fees will come into effect from 1 July 2005. Because levy payments are payable six months after the year to which they apply, it will take up to 31 December 2006 for all of the changes to flow through to payments by all registrants. The Australian Government had indicated its intention to introduce the Agricultural and Veterinary Chemicals Legislation Amendment Bill (No. 2) in the autumn 2005 session to implement a revised cost recovery structure for the Australian Pesticides and Veterinary Medicines Authority, incorporating a modular fee structure. However, this legislation had not been introduced at the time of this assessment.

In December 2003, the Australian Government endorsed the revised framework for the Australian Pesticides and Veterinary Medicines Authority's use of alternative suppliers of assessment services. The framework includes provisions for the contestability of some work, subject to certain conditions.

The working group examining the licensing of agricultural chemical manufacturers sent its report to the Primary Industries Standing Committee in June 2003. The standing committee supported the working group's endorsement of the national review recommendation to remove the (exempted) requirement for licensing until the case for licensing is made. It also agreed to close a gap in agvet legislation that does not allow for enforcing

compliance with the required quality of active constituents. The Australian Pesticides and Veterinary Medicines Authority released for public comment, a regulatory impact statement in December 2003 on quality assurance of active constituents and agricultural chemical products. On 1 May 2004, it introduced a new quality assurance system for active constituents.

The Australian Government considered the review recommendation concerning compensation for third party access to chemical assessment data, and agreed that an enhanced data protection system is needed. It consulted key industry stakeholders on a proposed reform package and is preparing drafting instructions for legislation—the Agricultural and Veterinary Chemicals Legislation Amendment Bill (No.1)—for introduction in the autumn 2005 session of Parliament The Bill is intended to implement a regime of data protection for agvet chemicals, which will cover new chemicals, extensions to the use of existing chemicals, and chemicals subject to review. However, this Bill had not been introduced at the time of this assessment.

Because some issues remain outstanding from the national review, the Australian Government has not finalised legislation to revise the national Agricultural and Veterinary Chemicals Code. The delay in finalising the national code has meant that reform of mirror state and territory legislation has not been completed. This delay has implications for the following state and territory legislation, which are discussed in the jurisdictional assessment chapters:

- *Agriculture and Veterinary Chemicals (New South Wales) Act 1994*
- *Agriculture and Veterinary Chemicals (Victoria) Act 1994*
- *Agricultural and Veterinary Chemicals (Queensland) Act 1994*
- *Agricultural and Veterinary Chemicals (Western Australia) Act 1994*
- *Agricultural and Veterinary Chemicals (South Australia) Act 1994*
- *Agricultural and Veterinary Chemicals (Tasmania) Act 1994*
- *Agricultural and Veterinary Chemicals (Northern Territory) Act*.

'Control of use' legislation

The national review examining 'control of use' legislation in Victoria, Queensland, Western Australia and Tasmania recommended that these governments:

- establish a task force to develop a nationally consistent approach to the control of the use of agvet chemicals

- continue to exempt veterinarians from provisions relating to the supply and use of veterinary chemicals, but remove the exemption in relation to agricultural chemicals

- retain the minimum necessary licensing (business and occupational) for agricultural chemical spraying.

Ministers in these jurisdictions established a Control of Use Taskforce as recommended. For off-label use, the task force considered that nationally consistent outcomes in chemical risk management are essential and that no areas have been identified in which there is a deficiency in desired outcomes. The taskforce agreed that more data are required nationally to substantiate risk management performance in agvet chemicals across the country. The Primary Industries Standing Committee endorsed the final report of the task force in March 2003.

The Control of Use Taskforce also recommended that work is needed to specify the circumstances in which a chemical can be used on another crop, together with an investigation of different methods of application. However, the Council understands that there are no arrangements in place to finalise this work.

The task force agreed to remove the veterinarian exemption from provisions on agricultural chemicals in Victoria and Queensland. Both jurisdictions have amended their legislation accordingly. The task force also agreed that there is a need to license aerial spraying businesses. A national working group is still considering appropriate licensing conditions for these businesses, including the need for insurance.

Review of the Mutual Recognition Agreement and the *Mutual Recognition (Commonwealth Government) Act 1992*

The 2003 NCP assessment reported on the 1997-98 review of the Mutual Recognition Agreement (which relates to Regulations applied to the sale of goods and the registration of companies) by a working group of the Council of Australian Governments (COAG) Committee on Regulatory Reform. On 8 January 2003, the Australian Government commissioned the Productivity Commission to undertake a further review of the Mutual Recognition Agreement (and the Trans-Tasman Mutual Recognition Arrangement). The review arose from the latter agreement's requirement that it be reviewed after five years, together with the second five-yearly review of the Mutual Recognition Agreement. The terms of reference of the review required the Productivity Commission to report on the efficiency and effectiveness of the Mutual Recognition Agreement and the Trans-Tasman Mutual Recognition Arrangement in enhancing trade, workforce mobility and international competitiveness; whether any changes are required to improve the

agreements' operation; and whether the scope of the agreements should be broadened.

The Productivity Commission reported in October 2003 and found that the two agreements have been effective overall in assisting the integration of the 10 economies and promoting competitiveness. It proposed some improvements and that consideration be given to applying mutual recognition to the *use* of goods (as well as the sale of goods). The Productivity Commission recommended retaining the special exemptions in areas such as therapeutic goods, hazardous substances, industrial chemicals, dangerous goods and consumer product safety standards, because the regulatory differences are justified. COAG's Committee on Regulatory Reform completed a report on the review for COAG and the New Zealand Government, and COAG approved it out of session in May 2004. A subsequent report by the Cross Jurisdictional Review Forum was submitted to the COAG Secretariat in February 2005 and is currently being dealt with out of session.

Review of the Petroleum (Submerged Lands) Acts

Australian, state and Northern Territory Acts regulate exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme. The Australia and New Zealand Minerals and Energy Council commissioned a national review of this legislation by a committee of Australian Government, state and Northern Territory officials. This committee engaged an independent consultant, which reported in April 2000. In response to the report, the committee reported to the Australia and New Zealand Minerals and Energy Council on 25 August 2000 that the legislation is essentially pro-competitive and that any restrictions on competition (for example, in relation to safety, the environment and resource management) are appropriate, given the net benefits to the community. The Australia and New Zealand Minerals and Energy Council endorsed the report at that meeting. The final report was made public on 27 March 2001, following consideration by the COAG Committee on Regulation Reform.

Two specific legislative amendments flowed from the review. One addressed potential compliance costs associated with retention leases, and the other expedited the rate at which exploration acreage can be made available to successive explorers. These amendments were incorporated in the Australian Government's *Petroleum (Submerged Lands) Legislation Amendment Act 2002*.

The national review of petroleum (submerged lands) legislation also recommended that the Australian Government rewrite its *Petroleum (Submerged Lands) Act 1967*. This project was completed and the resultant legislation, the Offshore Petroleum Bill 2005, was passed by the House of Representatives on 18 August 2005. Amendments and rewrites of the counterpart state and Northern Territory legislation will follow the

introduction of this legislation. Chapter 7 provides information on the intentions of individual states and the Northern Territory in amending their submerged lands legislation.

The Australian Government's *Petroleum (Submerged Lands) Amendment Act 2003* established the National Offshore Petroleum Safety Authority, which commenced operation on 1 January 2005 and regulates safety in the Australian marine jurisdiction and also in state and territory coastal waters. Each state and the Northern Territory has made, or will shortly make, corresponding amendments to its legislation, so as to confer equivalent functions on the authority in relation to petroleum activities in state and NT coastal waters.

Review of legislation regulating drugs, poisons and controlled substances legislation

The Australian, state and territory governments commissioned the Galbally Review to examine legislation and regulation that control access to, and the supply of, drugs, poisons and controlled substances. The legislation seeks to prevent poisoning, medical misadventure and the diversion of substances to the illicit drug market. The review report was finalised and presented to the Australian Health Ministers Conference, which was required by the review's terms of reference to forward the report to COAG with its comments. The final report was publicly released in January 2001.

The review concluded that there are sound reasons for Australia to have legislative controls that regulate drugs, poisons and controlled substances. It found that enhancing uniformity across jurisdictions and the interface between pieces of legislation could improve the efficiency and administration of the regulations. The review's key recommendations included:

- transferring controls on advertising, product labelling and product packaging to Australian Government legislation
- developing mechanisms for promoting uniformity across jurisdictions
- improving the efficiency of administration by creating separate scheduling committees for medicines and poisons, and closer links between scheduling and product evaluation.

The health ministers referred the review report to the Australian Health Ministers' Advisory Council, which established a working party to develop a draft response to the review recommendations for COAG's consideration. The advisory council endorsed the draft response and referred it to the Primary Industries Ministerial Council (which has an interest because implementation of the review's recommendations would affect the management of agvet chemicals). The ministerial council provided its comments in November 2002, allowing the working party to revise its draft response.

In July 2003 the Australian Health Ministers' Advisory Council sent the draft response to the Australian Health Ministers Conference, which endorsed the response out of session in October 2003. In January 2004, the Australian Health Ministers Conference forwarded the response and the Galbally report (through the Department of Prime Minister and Cabinet) to COAG for endorsement during 2004. The Australian Government Minister for Health wrote to the Prime Minister on 7 June 2004, asking that the response be progressed through COAG out of session. The Prime Minister forwarded the Galbally report and the proposed COAG response to its recommendations to Premiers and Chief Ministers for out-of-session consideration on 14 July 2004. Jurisdictions' endorsement of the review and the response was completed in July 2005. The COAG response provides for each jurisdiction's implementation of the recommendations over a 12-month period from COAG's endorsement.

Since the release of the Galbally report, the Australian and New Zealand governments have agreed to establish a joint agency (the Trans-Tasman Therapeutic Goods Agency) to regulate therapeutic goods. The agency will work under a joint regulatory framework, which is being developed. The Australian and New Zealand governments originally expected the agency to commence operations on 1 July 2005, but the Australian Parliament Secretary for Health announced on 9 February 2005 that the governments had agreed to defer the start-up for a year (that is, until 1 July 2006) to enable full consultation with interested parties. The states and territories will need to amend their drugs, poisons and controlled substances legislation, where necessary, to appropriately reference relevant parts of the Australian Government's legislation relating to the trans-Tasman agency.

Review of food Acts

The Australian Government's *Food Standards Australia New Zealand Act 1991* establishes Food Standards Australia New Zealand (FSANZ), which is responsible for developing, varying and reviewing the Food Standards Code (renamed the Australia New Zealand Food Standards Code in 1995). The code sets standards for the composition, labelling, safety, advertising, fortification and development of food. The objective of food legislation in each jurisdiction is to ensure food is safe for human consumption. One of the ways this is achieved is through the application of the Food Standards Code. The Australia New Zealand Food Standards Council (now the Australia New Zealand Food Regulation Ministerial Council) established a review of this legislation in 1996. The Australia New Zealand Food Authority (now FSANZ) coordinated the review and included representatives of the jurisdictions on the review panel.

The authority released the review report in May 1999. The review recommended a new risk management based approach to food regulation. It also recommended removing some restrictive provisions of food legislation (for example, opening up food inspections to third party auditors), but retaining certain exclusive powers where government enforcement is appropriate.

On 3 November 2000, COAG agreed to the food regulatory reform package, of which the Model Food Act is a part. In addition, COAG signed an Intergovernmental Agreement on Food Regulation, agreeing to implement the new food regulation system. All jurisdictions agreed to use their best endeavours to introduce legislation based on the Model Food Act to their respective Parliaments by November 2001.

In its previous NCP assessments, the Council assessed the Australian Government as having met its CPA obligations in connection with the development of the Food Standards Australia New Zealand Act and the joint Food Standards Code (now the Australia New Zealand Food Standards Code). All states and territories except Western Australia have modified their food legislation and met their CPA obligations in this area. Western Australia anticipates the introduction of its Food Bill in the spring 2005 parliamentary session.

Review of pharmacy regulation

COAG commissioned a major national review of restrictions on competition in Australian, state and territory government pharmacy legislation in 1999. The National Competition Policy Review of Pharmacy Regulation, chaired by Warwick Wilkinson AM, reported to governments in February 2000.

In relation to state and territory pharmacist legislation, the review recommended:

- retaining restrictions on who may own a pharmacy. It found that these restrictions provide a net public benefit to the community through improved professional conduct of pharmacy practice.

- lifting restrictions on the number of pharmacies that a pharmacist can own, but continuing to require pharmacist supervision of pharmacy operations. It found that numerical restrictions are arbitrary, artificial, easy to breach and difficult to enforce, and that requirements for pharmacist supervision of pharmacies ensure the provision of safe and competent services.

- continuing to permit friendly societies to own pharmacies, but prohibiting those not already operating in a given jurisdiction from operating pharmacies in that jurisdiction in the future.

COAG referred the national review to a working group comprising senior Australian, state and territory government officers. The working group released its report in August 2002, recommending that COAG accept most of the review recommendations. In particular, the working group supported the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own, agreeing that:

> … *[i]t provides the industry with an opportunity to develop more efficient pharmacy businesses … [and] … there are appropriate mechanisms already in place in the broader community to safeguard against the ill effects of market dominance*. (COAG 2002, pp. 12–13)

The working group questioned, however, the evidence supporting the national review's conclusion that restricting pharmacy ownership is in the public interest. It found that the national review, in coming to this conclusion, was hampered by a lack of evidence and did not seem to examine the different treatment of business ownership in the context of other Australian professions or overseas experience. It also questioned the value of ownership requirements in view of the review's recognition that requirements for pharmacists' supervision of pharmacies ensure safe and competent pharmacy services.

Nonetheless, the working group recommended that COAG accept the recommendation to retain the ownership restrictions. It considered that the impact of deregulating ownership could be too disruptive for the industry in the short term, given the other significant reforms proposed by the review (including proposals to limit restrictions on commercial aspects of pharmacy practices and to remove caps on the number of pharmacies that a pharmacist may own).

The working group also proposed that COAG reject the recommendation to prevent friendly societies from operating pharmacies in jurisdictions where they are not already present. It considered that the only issue that should determine the extent of friendly societies' participation in community pharmacy is whether they can run good pharmacies. On this basis, it concluded that friendly society pharmacies, as a sector, should be permitted to operate in the same way as other pharmacist proprietors.

COAG subsequently endorsed the recommendations of the working group, with the Prime Minister noting that:

> … *implementation of the recommendations of the report by state or territory governments will help ensure the continued provision of professional pharmacy services and high quality health care in the community*. (Howard 2002)

The Australian Government reinforced its commitment to implementing COAG outcomes in the context of the Third Community Pharmacy Agreement between the Australian Government and the Pharmacy Guild of Australia, in which it noted:

> *During the period of this agreement, the parties are committed to achieving … continued development of an effective, efficient and well-distributed community pharmacy service in Australia which takes account of the recommendations of the Competition Policy Review of Pharmacy and the objectives of National Competition Policy…* (Third Community Pharmacy Agreement 2000, p. 8)

The relevant jurisdictional chapters outline the Council's assessment of each state's and territory's response to the COAG national review processes.

Review of legislation regulating the architectural profession

In November 1999, the Productivity Commission commenced a nine-month review of legislation regulating the architectural profession, on behalf of all states and territories except Victoria. The Australian Government released the final report on 16 November 2000. The report found that the costs of current regulation outweigh the benefits. It recommended repealing state and territory architects Acts after an appropriate (two-year) notification period to allow the profession to introduce self-regulation involving a national, nonstatutory certification and course accreditation system that meets the requirements of Australian and overseas clients.

A national working group comprising representatives of all states and territories was convened to recommend a consolidated response to the Productivity Commission's findings. The working group supported the commission's broad objectives, but rejected the review's recommended approach as not being in the public interest. It recommended, instead, adopting the alternative approach—namely, adjusting existing legislation to remove elements deemed to be anticompetitive and not in the public interest.

The joint response provided a framework that state and territory governments adopted and that the Australian Procurement and Construction Ministerial Council endorsed in 2002. The framework establishes the basis for the Council's assessment of jurisdictions' compliance in this area.

When the Council completed the 2004 NCP assessment, Western Australia and South Australia were yet to implement legislative amendments incorporating the nationally agreed framework. Subsequently, the Western Australian Parliament passed the Architects Bill 2003 on 17 December 2004. South Australia has yet to implement the national framework.

Review of radiation protection legislation

In December 1998, COAG agreed to conduct a single joint national NCP review of radiation protection legislation. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) coordinated the review. One of ARPANSA's aims is to promote national uniformity in radiation protection and nuclear safety policy and practices. To this end, it formed the National Uniformity Implementation Panel (Radiation Control) in August 1998 as a working group of its Radiation Health Committee. Comprising officers from the Australian, state and territory radiation protection agencies, the panel is the steering committee for the NCP review.

ARPANSA released an issues paper and a draft report for public comment during 2000 and 2001, and the final report on 8 May 2001. The review found the current legislative framework for radiation protection to be appropriate. ARPANSA considered that retaining a generally prescriptive regulatory approach is necessary to protect public health and safety and the environment from the harmful effects of radiation. The review report thus recommended retaining most of the existing restrictions on net public benefit grounds; the exception related to advertising and promotional activities in Western Australia only. The report included recommendations for further action to improve the efficiency of the legislation.

In May 2001, ARPANSA presented jurisdictions' responses to the report recommendations to the Australian Health Ministers Advisory Council, which approved the final list of recommendations on 31 May 2002 and also an implementation plan for 12 projects for various jurisdictions to undertake.

ARPANSA published the first edition of National Directory for Radiation Protection in August 2004 following the completion of a cost–benefit analysis requested by health ministers. The national directory provides the best practice template that will enable states and territories to complete their legislative and regulatory changes.

The legislative changes required to allow automatic adoption of the national directory are under way. New South Wales implemented the recommendations of the national NCP review via the *Radiation Control (Amendment Act) Act 2002*. It has recently made amendments to allow the Act to reflect the national directory and future changes to the directory. Victoria introduced the Radiation Protection Bill to Parliament on 6 August 2005. Queensland amended its legislation in 1999 when it understood the direction of national change, and so it will not have to make major legislative amendments as a result of the national directory being completed. Western Australia removed restrictions on advertising following the national review report being completed; its legislation is unlikely to require significant changes as a result of the national directory being finished, because its regulation of non-ionising legislation is already consistent with the directory. South Australia's 2005 NCP annual report indicates the state will incorporate provisions of the National Directory in its review of the Act and Regulations, to be completed by June 2006. Tasmania is preparing a Bill that takes the national directory into account. The ACT anticipates that new legislation will be in place by late 2006. The Northern Territory passed the *Radiation Protection Act* in March 2004 and is preparing accompanying Regulations.

Review of trustee corporations legislation

The Standing Committee of Attorneys-General is conducting an NCP review of the regulation of trustee companies, with a view to replacing the current state regulation with a national scheme of complementary laws. The standing committee released a consultation paper on a draft uniform Bill in May 2001. The consultation paper discussed the key features of the trustee corporations

industry, the main provisions of the draft Bill, and options for future regulation of the industry. The draft Bill seeks to provide for regulation of trustee corporations that is commensurate with the nature of the industry and the risks posed to consumers by defaults of trustee corporations.

Underpinning the NCP report and the draft Bill is the assumption that certain aspects of the scheme would be delegated to the Australian Prudential Regulation Authority (APRA). The New South Wales Attorney-General's Department, which provides the secretariat to the Standing Committee of Attorneys-General, informed the Council in May 2003, however, that the Australian Government had advised in April 2003 that APRA would not regulate trustee corporation activities that fall outside the scope of Australian Government legislation. Some states and territories sought reconsideration of this decision by the Australian Government. At the standing committee meeting in November 2003, the Australian Government Attorney General indicated he may reconsider APRA regulation and agreed to take a final submission from the states and territories. The New South Wales Attorney-General made a submission on behalf of other states and territories on 6 February 2004. At the standing committee meeting on 18–19 March 2004, the Australian Government Attorney-General indicated that the Australian Government would deliberate on the issue.

He subsequently advised the states and territories on 17 March 2005 that the Australian Government would not widen APRA's role to include supervision of the trustee corporations. Now that the Australian Government has confirmed that APRA will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take.

Review of travel agents legislation

The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a working party, to review legislation regulating travel agents. The ministerial council released the review report for public comment in August 2000. The report recommended removing entry qualifications for travel agents, maintaining compulsory insurance and dropping the requirement for agents to be members of the Travel Compensation Fund (the compulsory insurance scheme). It preferred a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund. Other recommendations included increasing the current licence exemption threshold to $50 000 and removing the exemption for Crown owned travel agency businesses from licensing requirements. When the review report was prepared, a person was exempt from travel agents licensing in most jurisdictions if the total value of the travel arrangements made by that person in a financial year did not exceed $30 000.

The Western Australian Department of Consumer and Employment Protection, in liaison with the COAG Committee on Regulatory Reform,

coordinated the preparation of a response to the review. The working party led by Western Australia, reported to ministers in August 2002, supporting all of the review's recommendations except:

- the introduction of a competitive insurance model, because the working party had concerns about the continuity of private supply, premium levels, price volatility and the risk minimisation strategies of private insurers. It preferred to retain the Travel Compensation Fund, but advised that the ministerial council should review contribution arrangements to establish a risk based premium structure and to make prudential and reporting arrangements more equitable.

- the removal of entry qualifications. The working party recommended instead that qualification requirements be reviewed and amended to ensure uniformity. It argued that this uniformity would overcome the problems identified in the review report.

The Ministerial Council on Consumer Affairs endorsed the working party's recommendations in November 2002, and the Standing Committee of Officials of Consumer Affairs is to oversee implementation of the reforms. This implementation was delayed by the need to finalise at a national level the issues raised by the working party (issues relating to contributions to the Travel Compensation Fund, prudential and reporting requirements, and uniformity of qualifications). This work is now finished and all states and territories are progressing towards completing their implementation of the working party's recommendations (see the relevant jurisdictional chapters).

Review of 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 came into effect in November 1996, replacing various state and territory statutes governing credit, money lending and aspects of hire purchase.

The code was enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia enacted alternative consistent legislation that required, until recently, constant amendment by the Western Australian Parliament to remain consistent when the code is amended in Queensland. On 30 June 2003, however, Western Australia adopted the template legislation system favoured by the other states and territories. Tasmania enacted a modified template system.

State and territory governments jointly undertook an NCP review of the Consumer Credit Code legislation. (In addition to this review, several jurisdictions identified other consumer credit related legislation for review, possible review or amendment.) The national review of the Consumer Credit

Code commenced in late 1999 based on a review process approved by the COAG Committee on Regulatory Reform. It was undertaken by an independent consultant steered by a working party of representatives from each participating jurisdiction.

The NCP review followed the post-implementation review, which recommended legislative changes, some of which may have an impact on competition. The Council understands that the NCP review addressed those recommendations and that the Ministerial Council on Consumer Affairs considered the two reports together.

A draft report of the national NCP review of the Consumer Credit Code was released for public consultation in December 2001. It recommends maintaining the current provisions of the code; reviewing its definitions to bring term sales of land, conditional sale agreements, tiny term contracts and solicitor lending within the scope of the code; and enhancing the code's pre-contractual disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee, which is facilitating the resolution of certain issues (as suggested by the NCP review) emanating from the post-implementation review (for example, credit issues relating to solicitors, electronic commerce and general disclosure provisions).

In September 2005, the Standing Committee of Officials of Consumer Affairs was considering a Consultation Draft Bill prepared in order to implement one of the two recommendations for legislative change in the NCP review. Stakeholder feedback will be obtained before the Bill is finalised and put to the Ministerial Council on Consumer Affairs for sign-off and introduction into the Queensland Parliament, the template state for the Code. Automatic updating of relevant legislation (through a 'mirror legislation' process) will then occur in all other states and territories except Tasmania, which will enact legislation that is consistent with the template legislation.

The other NCP review recommendation, addressing pre-contractual disclosure of key financial information, has also been progressed to consultation draft status. As at September 2005, the Uniform Consumer Credit Code Management Committee is waiting for the NSW Chief Parliamentary Counsel, on behalf of the Parliamentary Counsels Committee, to supply the finalised draft of the proposed amending regulations. This draft will be put to stakeholders for feedback on the method of implementation revealed by the detail in the draft.

Preparation of the draft legislation has been time consuming because it requires consultation on complex implementation issues. For example, changing the disclosure regime will have consequences for financial entities' systems. The Consumer Credit Code changes arising from the post-implementation review and the national NCP review are unlikely to be completed until 2006.

Review of trade measurement legislation

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, along with controls for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. Governments (except Western Australia) 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 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 intend to review the Acts administering the national scheme, in addition to those Acts applying it.

A scoping paper for the national NCP review concluded that restrictions on the method of sale appear to have little adverse effect on competition and to provide benefits for consumers. The one exception concerns restrictions on the sale of non-prepacked meat. A draft report on such meat was circulated to jurisdictions during 2002, and the review's working group has since finalised the report. The working group consulted with stakeholders in early 2003, then reported to the Standing Committee of Officials on Consumer Affairs in November 2003. On 28 November 2003, the standing committee approved the final public benefit test report on the sale of non-prepacked meat, endorsed the report recommendations and recommended the final report and its recommendations to the Ministerial Council on Consumer Affairs for approval and public release. In May 2004, the ministerial council endorsed the recommendations of the final report and agreed to its public release. Although Western Australia is not a signatory to the uniform trade measurement scheme, it also agreed with the final report. The consultation process gave rise to a new issue —that is, whether seafood and poultry should be included in the definition of meat. Consumer Affairs Victoria is reviewing issue, and a draft of the consultant's report was circulated to members of the Trade Measurement Advisory Committee for comment. Those comments are being reviewed for incorporation into final documents for approval by SCOCA in late 2005.

Because the national review and reform process has not been completed, the states and territories involved have yet to meet their CPA obligations. This is also the case for Western Australia, which decided to replace its legislation with a new Act based on the nationally agreed model.

In addition to the national review of trade measurement legislation, some governments listed their trade measurement (administration) legislation for review. For this legislation, the Council previously assessed Queensland, Tasmania, the ACT and the Northern Territory as having met their CPA clause 5 obligations. In this assessment, the Council has assessed South

Australia as compliant with its CPA clause 5 obligations. Although its legislation does not appear to contain significant competition restrictions, the Council assesses New South Wales as noncompliant because the state is awaiting the national response before implementing reforms.

Regulation of the legal profession

Reforms to the regulation of the legal profession have been pursued at the national level and the state and territory level. At the national level, on 4 May 2004, the Standing Committee of Attorneys-General released the national model provisions on the legal profession, which will form the basis for improving consistency across the legal profession in different jurisdictions.[1]

While the provisions under the model Bill do not stem from NCP requirements, enhanced consistency in requirements across jurisdictions can promote increased competition in the delivery of services to consumers. The Bill also addresses particular areas covered by recommendations of NCP reviews relating to legal profession regulation. These areas include the implications for addressing competition restrictions in areas such as admission and rights to practise, and the ability of lawyers to practise through corporations and in partnerships with other professionals.

The Bill also notes that '[d]evelopment will continue of a scheme relating to professional indemnity insurance that will facilitate interstate practice. In the interim, there will be jurisdictional variation relating to insurance requirements' (SCAG 2004, part 9).

The relevant jurisdictional chapters outline the Council's assessment of each state's and territory's review and reform progress in relation to regulation of the legal profession.

[1] The Australian Government Office of Regulation Review noted in its 2004 report to the Council on compliance with national standard setting that a regulatory impact statement (consistent with COAG guidelines) was not prepared for consultation on the proposed core model provisions or the decision by the Standing Committee of Attorneys-General to endorse them (see NCC 2004, p. 5.4).