

Australian Government National Competition Policy

Annual Report

2004-05

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Abbreviations

ABA	Australian Broadcasting Authority
ACA	Australian Communications Authority
ACCC	Australian Competition and Consumer Commission
ACT	Australian Competition Tribunal
ADC	Australian Dairy Corporation
AGCNCO	Australian Government Competitive Neutrality Complaints Office (formerly Commonwealth Government Competitive Neutrality Complaints Office (CCNCO))
AHMAC	Australian Health Ministers' Advisory Council
AHMC	Australian Health Ministers' Conference
AMSA	Australian Maritime Safety Authority
ANTA	Australian National Training Authority
ANZFA	Australia New Zealand Food Authority (now Food Standards Australia New Zealand)
ANZMEC	Australian and New Zealand Minerals and Energy Council
AQIS	Australian Quarantine and Inspection Service
ARMCANZ	Agriculture and Resource Management Council of Australia and New Zealand
ARRB	ARRB Transport Research Limited
ATC	Australian Transport Council
AUSTRAC	Australian Transaction Reports and Analysis Centre
AWB	Australian Wheat Board
AWBI	AWB (International) Limited
CAC Act	<i>Commonwealth Authorities and Companies Act 1997</i>
CAL	Camden Airport Limited

CAPEC	Conference of Asia Pacific Express Couriers
CASA	Civil Aviation Safety Authority
CCA	<i>Conduct Code Agreement</i>
CEOGW	Chief Executive Officer's Group on Water
CLRS	Commonwealth Legislation Review Schedule
CNPS	<i>Commonwealth Competitive Neutrality Policy Statement (June 1996)</i>
COAG	Council of Australian Governments
CPA	Competition Principles Agreement
CSO	Community Service Obligation
DAFF	Department of Agriculture, Fisheries and Forestry
DOFA	Department of Finance and Administration
DHA	Defence Housing Authority
DOTARS	Department of Transport and Regional Services
EAL	Essendon Airport Limited
EFIC	Export Finance and Insurance Corporation
FAGs	Financial Assistance Grants
FBT	Fringe benefits tax
FIRS	Federal Interstate Registration Scheme
FMA Act	<i>Financial Management and Accountability Act 1997</i>
FRC	Full retail contestability
FSANZ	Food Standards Australia and New Zealand
FTR Act	<i>Financial Transaction Reports Act 1988</i>
GBE	Government Business Enterprise
GDP	Gross domestic product
GST	Goods and services tax
HAL	Horticulture Australia Limited
IDC	Interdepartmental Committee

ITSA	Insolvency and Trustee Service Australia
LSAA	Legal Services Association Australia
LVS	Low Volume Scheme
MCE	Ministerial Council on Energy
MRA	Mutual Recognition Agreement
MHA	Member of the House of Assembly
NCC	National Competition Council
NCP	National Competition Policy
NECA	National Electricity Code Administrator
NEM	National Electricity Market
NEMMCO	National Electricity Market Management Company
NGPAC	National Gas Pipelines Advisory Committee
NRA	National Registration Authority for Agricultural and Veterinary Chemicals
NRS	National Residue Survey
NRTC	National Road Transport Commission
ODS	Ozone depleting substances
OECD	Organisation for Economic Co-operation and Development
ORR	Office of Regulation Review
PBS	Pharmaceutical Benefits Scheme
PIMC	Primary Industries Ministerial Council
PISC	Primary Industries Standing Committee
PSA	<i>Prices Surveillance Act 1983</i>
PZJA	Protected Zone Joint Authority
RAWS	Registered Automotive Workshop Scheme
RFA	Regional Forest Agreement
RIS	Regulation Impact Statement

RTI	Regional Telecommunications Inquiry
SACL	Sydney Airport Corporation Limited
SCARM	Standing Committee on Agriculture and Resource Management
SEVS	Specialist and Enthusiast Vehicle Scheme
SWG	Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group
TPA	<i>Trade Practices Act 1974</i>
TTMRA	Trans-Tasman Mutual Recognition Agreement
USO	Universal Service Obligation
WEA	Wheat Export Authority
WTO	World Trade Organisation
VET	Vocational education and training
WMA	<i>Wheat Marketing Act 1989</i>

Introduction

The importance of competition policy for Australia

The performance of the Australian economy over the past decade has been exceptional by both historical and international standards. Economic expansion over that period has been longer and steadier than any period since the 1960s, which, together with a stable macroeconomic framework, has resulted in significant reductions in unemployment while providing a low inflation rate. Moreover, 'in the last decade of the 20th century, Australia became a model for other OECD countries in two respects: first, the tenacity and thoroughness with which deep structural reforms were proposed, discussed, legislated, implemented and followed-up in virtually all markets, creating a deep-seated 'competition culture' and second, the adoption of fiscal and monetary frameworks that emphasised transparency and accountability established stability oriented macro policies as a constant largely protected from political debate. Together, these structural and macro policy anchors conferred an enviable degree of resilience and flexibility of the Australian economy.'¹

In the period 1990 to 2004, Australia's average annual growth in real gross domestic product (GDP) per capita of 2.2 per cent exceeded the OECD average of 1.7 per cent and the United States average of 1.8 per cent.

The strong performance of the Australian economy has been underpinned by acceleration in productivity growth. Multifactor productivity increased at an average annual rate of 1.0 per cent per annum during the late 1990s and early 2000's, and by 2.1 per cent per annum in the mid-to-late 1990s. This compares to a long-run average of 1.2 per cent per annum (1964-65 – 2003-04). These gains are the result of the development and, more importantly, adoption of new technology and innovations, better organisation of production within firms, more efficient resource allocation across industries and improved international competitiveness. Growth and export competitiveness, in the future, will depend on a continued favourable productivity performance.

1 OECD Economic Survey of Australia 2004, p 9.

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

Competition reforms have contributed to Australia's strong economic performance. Reforms have reduced barriers to market entry and exit, improving anti-competitive regulations and exposing government-owned businesses to market forces in a competitively neutral manner. Competition provides incentives that promote productivity growth and address excessive investment in some sectors and under-investment in others, poor service delivery and inefficient pricing.

Reforms introduced under the National Competition Policy (NCP) framework continue to benefit the economy, with the Productivity Commission observing that productivity and price changes in key infrastructure sectors in the 1990s – to which NCP and related reforms have directly contributed – have increased GDP by 2.5 per cent or \$20 billion.² In addition, the Australian Bureau of Agricultural and Resource Economics (ABARE) estimates suggest that reform in the electricity sector will deliver around \$16 billion of benefits between 1995 and 2010, of which over 60 per cent – or about \$9 billion – have already been delivered.³

Competition reforms have helped Australia adapt more readily to the internationalisation of the economy. Lower domestic production costs, arising from NCP reforms enhance Australia's export competitiveness. During the 1990s export volumes grew, on average, by around 7 per cent per year — the highest growth rate of any post war decade.⁴

Effective competition in markets for goods and services provides the main impetus for firms to seek productivity improvements, and ensures

2 Productivity Commission, *Review of National Competition Policy Reforms*, Final Report, Canberra, 2005, p xvii.

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

4 Productivity Commission, *Review of National Competition Policy Reforms*, Final Report, Canberra, 2005, p 39.

that a greater proportion of these gains are distributed in the form of lower prices rather than retained by firms as higher profits. This reduces operating costs and prices to business and consumers and encourages a wider range and improved quality of goods and services.

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

Competition encourages innovation in product design, production processes and management practices as firms seek productivity gains. The manner in which resources are managed within the workplace, the rate of adoption of innovation and the development of associated skills all play an important role in productivity growth.

Sustained productivity growth is essential to the continued improvement in Australia's living standards. Notwithstanding difficulties in establishing causality, the Productivity Commission has previously concluded that NCP and other microeconomic reform has led to a more flexible, responsive and innovative business culture that should provide additional 'dynamic efficiency' against the community over time.⁵ Competition policy is yielding ongoing benefits for Australia.

National Competition Policy framework

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

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

The commitments embodied in these Agreements effectively underpin NCP in Australia.⁶ These reforms perform a mutually reinforcing role with other competition policy initiatives, such as the limitations on anti-competitive conduct established by the *Trade Practices Act 1974* (TPA).

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

- the review and, where necessary, reform of legislation that is anti-competitive, with the requirement that where such legislation is to be retained or introduced it must be demonstrably in the public interest (Chapter 1);
- the implementation of competitive neutrality for all government business activity operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership. For example, they should be liable for the same taxes and charges, rate of return and dividend requirements as their private sector competitors (Chapter 2);
- the structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantage over potential competitors (Chapter 3);
- the provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports and communications networks) that would be uneconomic to duplicate, to encourage competition in upstream and downstream markets and reduced prices for related products (Chapter 4);
- independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive (the Australian Government already has prices oversight provisions) (Chapter 5);

⁶ The 1995 Agreements also resulted in the establishment of the NCC, an inter-jurisdictional body funded by the Australian Government. The NCC has statutory responsibilities under the Australian Government TPA as well as specified roles under the Agreements aimed at ensuring the effective implementation of NCP.

- the application of competition law across all jurisdictions (including the scope for exceptions in certain circumstances), centrally administered by the Australian Competition and Consumer Commission (ACCC) (Chapter 6); and
- ensuring commitment to related reforms in key infrastructure areas of electricity, gas, road transport, and until 2005, water with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment (Chapter 7).

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

NCP reforms have contributed to reductions in costs and prices across most infrastructure services that have been subject to reform. However, it is important to recognise that this is a long-term process. Ongoing commitment by all levels of government to effective reform will be necessary to realise significant returns.

Box 1: What is National Competition Policy?

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

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

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

- mandate the privatisation of government businesses;
- force competitive tendering and contracting out of government services;
- require the end of cooperative marketing by farmers;
- ignore social, regional and environmental considerations; or
- prohibit consideration of transitional adjustment assistance programmes.

Public interest test

NCP, microeconomic reform and globalisation have been claimed to result in adverse social outcomes.⁷

The Productivity Commission found that, though varying in size, the benefits of NCP and related reforms have been spread across the community, including most of rural and regional Australia.⁸

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

8 Productivity Commission, *Review of National Competition Policy Reforms*, Final Report, Canberra, 2005, p xvii.

NCP is not concerned with reform or competition for its own sake. Rather, the focus is on competition reform that is in the 'public interest'. To this end, the CPA provides a mechanism – the public interest test – to examine the relationship between the overall interests of the community, competition and desirable economic and social outcomes. These factors are broader than the economic benefits and costs of a proposed reform (see Box 3 on page 15).⁹

Further, the Council of Australian Governments (COAG) at its November 2000 meeting agreed, *inter alia*, to enhancements to the public interest test.¹⁰

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

The need for safeguards

Situations may occur where competition does not achieve efficient resource use and maximum community benefit (due to market failure) or where competition conflicts with other social objectives. In many instances, reforms will be complemented by a regulatory framework that provides a safety net against market structures failing to deliver adequate competitive outcomes, addresses markets that are in transition towards competitive structures, or enables the delivery of Community Service Obligations (CSO).

Furthermore, reforms may result in short-term adjustment costs – potentially concentrated on specific sectors or geographical regions.

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

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

While greater than the costs, the benefits usually accrue over the longer term and are more widely distributed across the community.

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

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

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

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

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

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

The Australian Government's reporting requirement

Under the CPA, the Australian Government is required to publish an annual report outlining its progress towards:

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition (as outlined in the Commonwealth Legislation Review Schedule)¹¹; and
- implementing competitive neutrality principles, including allegations of non-compliance.

However, to recognise fully the range of Australian Government commitments established by the NCP Agreements, all areas of Australian Government involvement have been reported.¹²

This report formally covers the period from approximately 1 July 2004 to 30 June 2005.

National Competition Policy payments

Under the Implementation Agreement, the Australian Government agreed to make competition payments to those States and Territories assessed as making satisfactory progress towards the implementation of specified competition and related reforms.

These payments represent the States and Territories' share of the additional revenue raised by the Australian Government as a result of effective competition reform, and are worth approximately \$5 billion (between 1997-98 and 2005-06).

These payments originally comprised three tranches of competition payments and the real per capita component of the annual Financial Assistance Grants (FAGs). However, the FAGs component ceased on 1 July 2000, as agreed to by all States and Territories, with the signing of the *Intergovernmental Agreement on the Reform of Commonwealth-State Financial Relations*.

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

12 The commitments contained within the NCP Agreements apply to both Australian Government and State and Territory governments. This report discusses these commitments from the Australian Government perspective.

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

The Implementation Agreement specifies the commitments States and Territories must meet in order to receive the maximum competition payment. The National Competition Council (NCC) assesses jurisdictions' performance in implementing the required reforms.¹³ This assessment forms the basis for determining state and territory eligibility for payment.

For the period 2001-02 all States and Territories received their full allocation of payments, with the exception of Queensland. Queensland incurred a permanent deduction of \$270,000. The total amount of competition payments was \$733.3 million.

For the period 2002-03, all States and Territories received their full allocation of payments, apart from Queensland. Queensland incurred a suspension of \$270,000 and as a result NCP payments in 2002-03 totalled \$739.6 million.

For the period 2003-04 the estimated maximum level of competition payments was \$759 million. The Australian Government determined the level of payments after taking into account the NCC's penalty recommendations and comments from the States and Territories on the penalty recommendations. The Australian Government accepted the NCC's recommended penalties, consisting of \$53.9 million in the form of

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

permanent deductions and \$126.9 million in payment suspensions, for jurisdictions' lack of progress in meeting their NCP obligations. The Government also agreed to release Queensland's 2002-03 suspended funds. As a result, \$578.5 million in competition payments was paid to the States and Territories in 2003-04.

The NCC has indicated that it will recommend that specific suspensions be lifted and reimbursed if and when jurisdictions sufficiently progress reform. With respect to pool suspensions, the NCC will reassess these penalties in subsequent assessments and, where satisfactory progress is made, may recommend that the suspension be lifted or reduced and the suspended amounts reimbursed. The NCC had deferred its assessments of New South Wales and Victoria's progress with implementing water reform until 2004 and these assessments were released in mid 2004. The NCC did not recommend any payment penalties for the two States in relation to their 2003-04 competition payments.

For the period 2004-05, the Australian Government accepted the NCC's penalty recommendations unchanged, so imposing penalties totalling \$140.3 million (of which \$26.3 million would be a permanent deduction) for jurisdictions' lack of progress in meeting their NCP obligations. However, the States and Territories did receive reimbursements of 2003-04 suspended amounts totalling \$85.1 million (of a possible \$126.9 million), with opportunities for reimbursement of 2004-05 suspended amounts of \$114.1 million subject to further assessment by the NCC. In total, \$724.4 million in competition payments was paid to the States and Territories in 2004-05.

For the period 2005-06, the Australian Government accepted the majority of the NCC's penalty recommendations unchanged. It did not accept the recommended penalty for the Northern Territory. No deduction has been applied to the Northern Territory in relation to liquor licensing as the Government considered that the Northern Territory is working to address the significant social and health issues associated with excessive alcohol consumption, and that the restrictions contained in the Northern Territory's legislation are directed at achieving harm minimisation objectives. Penalties totalling \$40.7 million are to be imposed, all of which were permanent deductions, for jurisdictions lack of progress in meeting their NCP obligations. Reimbursements of 2004-05 suspensions,

totalling \$74.5 million, were also agreed to. In total, \$834.0 million will be paid to the States and Territories in 2005-06.

The 2005-06 competition payments are still subject to jurisdictions' progress in relation to their water reform obligations. The assessment of progress will be conducted by the National Water Commission (NWC), in line with the National Water Initiative, rather than the NCC. The NWC has yet to complete its assessment and the Government expects to receive their recommendations in early 2006.

Further information relating to payments, including announcements of the Australian Government's decisions on NCC assessments, is available on the Treasurer's website (www.treasurer.gov.au).

The future of National Competition Policy

In November 2000, COAG agreed that the terms and operation of the CCA, CPA, the Implementation Agreement, and the NCC's assessment role would be review in 2005. This review is being conducted by COAG Senior Officials and is to report to COAG by the end of 2005. The COAG review of NCP is to draw from, but not be limited by, the recommendations of the Productivity Commission's inquiry report into NCP reforms. The recommendations of this review are expected to be considered by COAG in early 2006.

Internet resource material

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

Other relevant sites include the NCC (www.ncc.gov.au); the Productivity Commission and Australian Government Competitive Neutrality Complaints Office (www.pc.gov.au); the ACCC (www.accc.gov.au) and the Department of Finance and Administration (www.finance.gov.au).

1 Legislation review

1.1 Why is legislation review necessary?

Restrictions imposed on markets by government regulation, for example through the creation of legislated monopolies or the imposition of particular pricing practices can be a major impediment to competitive outcomes. Compliance with these regulations can also impose significant costs on business.

In recognition of this, the Competition Principles Agreement (CPA) states that legislation (including Acts, enactments, ordinances or regulations) should not restrict competition unless it can be demonstrated that:

- the benefits of the restriction to the community as a whole outweigh the costs; and
- the objectives of the legislation can only be achieved by restricting competition.

This is generally referred to as the 'public interest test' (see also Box 3).

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

The requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. To satisfy this commitment the Australian Government introduced its regulation impact assessment process (see Section 1.4.1).

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

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

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

Box 2: When is legislation anti-competitive?

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

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

The objective of the CPA legislation reform programme is to remove restrictions on competition that are demonstrated not to be in the interest of the community as a whole. However, following the Prime Minister's policy statement *More Time for Business* (1997), the Australian Government's legislation review requirement was expanded to include the assessment of legislation that imposes costs or confers benefits on business. The aim is to reduce compliance costs and the paperwork burden for business.

An essential component of legislative reform is the validity of the review process. To ensure all relevant costs and benefits are recognised, the CPA sets out a range of issues that should be considered in examining any

1 F Hilmer, M Rayner, G Taperell, *National Competition Policy, Report by the Independent Committee of Inquiry*

particular piece of legislation. These issues are set out in Box 3 below, and include social, regional and environmental factors.

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

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

Box 3: Assessing the public interest

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

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

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

The Australian Government's compliance with its legislation review requirements is independently assessed by the NCC, and is also reported in *Regulation and its Review 2004-05*.³

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

Where Australian Government legislation is complemented or matched by state or territory regulation, a coordinated national review may be undertaken. Australian Government participation in national reviews is examined in Section 1.3.

1.2 Commonwealth Legislation Review Schedule

The CLRS details the Australian Government's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition or imposes costs or confers benefits on business by the year 2000.⁴

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

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

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

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

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

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

The CLRS as at 30 June 2005 is at Appendix A.

Reporting requirements for legislation reviews

The following sections provide information on the Australian Government's progress during 2004-05 in meeting its scheduled legislation review commitments.

This information has been organised to reflect the degree of progress made to date. For each individual review, information is provided below.⁶

Complexity of the review and details of the review panel

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

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

Terms of reference

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

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

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

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

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

Where a review has commenced during a reporting period, the terms of reference have been published in the relevant annual report. There were no new review terms of reference finalised in the period 1 July 2004 and 30 June 2005.

Extent of public consultation

Public consultation is a required part of all CLRS legislation reviews. This obligation was stipulated by the Australian Government in the release of the CLRS. The National Competition Council (NCC) has recommended that, to meet this obligation, all reviews should be conducted in an independent, open and transparent way, against clear terms of reference, and in a manner that allows interested parties to participate.

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

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

Review progress or recommendations and Government response

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

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

The following sections report on the Australian Government's review and reform activity in the period of approximately 1 July 2004 to 30 June 2005. Details of reviews completed in previous reporting periods are available in previous annual reports (available at: www.treasury.gov.au).

1.2.1 Reviews completed and reform outcomes announced

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

This Act preserves and protects from injury or desecration areas and objects that are of particular significance to Aboriginal and Torres Strait Islander peoples.

In October 1995, the previous Government commissioned a review of this Act by the Hon Elizabeth Evatt AC.

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

Review progress

The Evatt Report was received by Government in August 1996. The report made recommendations concerning reforms to Commonwealth, State and Territory Indigenous heritage protection regimes. The major recommendations included:

- establishment of national standards for the protection of Indigenous heritage;

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

Government response

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

The Bill was first introduced in the House of Representatives in April 1998 and after the 1998 election was re-introduced in the House of Representatives in November 1998. The opposition made 179 amendments to the Bill in the Senate in November 1999, most of which were unacceptable to the Government. The Government consulted all major stakeholders over the next two years. The Government renewed its commitment to progress the Bill after it lapsed with the proroguing of Parliament for the 2001 election. The Government has continued consultations with all stakeholders and has renewed its commitment to replacing the current Act with new legislation in the current parliament.

Australian Maritime Safety Authority Act 1990 (Department of Transport and Regional Services)

This Act established Australian Maritime Safety Authority (AMSA) to regulate and enhance safety and marine environmental protection for commercial shipping.

Terms of reference were approved in 1996 for the review of this Act.

The review panel comprised seconded officials from the Department of Transport and Regional Development, the Bureau of Transport and Communications Economics and AMSA, with a senior executive level steering committee from the department and AMSA, and an independent reference committee.

Review progress

The review report was finalised in June 1997, its main recommendations were:

- the department and AMSA examine development of appropriate benchmark indicators of maritime safety in Australia;
- the department's Marine Incident Investigation Unit should explicitly examine the role of safety systems in incidents and make recommendations on their improvement which should be separately published with the response of relevant authorities;
- AMSA investigate consistency of port state control implementation at different Australian ports;
- AMSA, the Australian Maritime College and other maritime training institutions establish a regular consultative forum; and
- AMSA's current administrative arrangements continue, with the AMSA Board to review scope to contract out administrative activities.

Government response

The Government agreed in 1998 that the recommendations of the report be implemented internally. Legislative amendment was not required. No general reviews of the AMSA Act are currently planned, but governance arrangements are being reviewed in 2005 in the context of the Uhrig Review of governance arrangements for statutory bodies.

Australian Postal Corporation Act 1989

(Department of Communications, Information Technology and the Arts)

The review of the *Australian Postal Corporation Act 1989* commenced in May 1997 and was conducted by the NCC.

Government response

The *Postal Services Legislation Amendment Act 2004*, which received assent on 22 June 2004, contained amendments to address regulatory and consumer issues relating to the postal legislation regime. The powers of the Australian Competition and Consumer Commission (ACCC) will be extended to allow the ACCC to inquire into any of the terms and conditions of a bulk interconnection service. The Government is currently addressing implementation issues arising from the passage of the legislation.

The Government introduced the Postal Industry Ombudsman Bill 2004 into Parliament on 17 November 2004. It is anticipated that the Bill will progress through Parliament in 2005. The Bill provides for the establishment of a Postal Industry Ombudsman (PIO) within the office of the Commonwealth Ombudsman. The establishment of the PIO is the result of a 2001 election commitment that recognised the need for a dedicated independent entity to deal with complaints from consumers and small business about the provision of postal services. The PIO will have jurisdiction over Australia Post and any other postal operators who elect to 'opt into' the PIO scheme.

*Bounty (books) Act 1986, Bounty (fuel ethanol) Act 1994, and
Bounty (machine tools and robots) Act 1985*
(Department of Industry, Tourism and Resources)

It is planned to repeal all three Acts in the 2006 Autumn Session of Parliament via the Statutory Law Revision Bill (No.2) 2005.

Customs Tariff Act 1995 (automotive industry arrangements)
(Department of Industry, Tourism and Resources)

Customs Tariff Act 1995 imposes customs duty on goods imported into Australia.

Review progress

Two reviews preceded this legislation being passed. The first, entitled *The Automotive Industry*, was published in May 1997 by the then Industry

Commission (the Commission). The purpose of this review was, among other things:

... to encourage the development of sustainable, prosperous and internationally competitive automotive manufacturing industry in Australia; to improve the overall economic performance of the Australian automotive industry; to provide good quality, competitively priced vehicles to the Australian consumer; and its commitment to abide by Australia's international obligations and commitments.

The Commission noted in its report that:

... history shows that the higher the level of assistance to the industry the poorer the industry's performance.

The Commission therefore recommended that tariffs on motor vehicles and components be reduced to 5 per cent by 2004 (the tariff was then at 22.5 per cent but was already scheduled to fall to 15 per cent by 2000). The Commissioners conducting the review, however, were not unanimous in their conclusions about the automotive industry.

The minority report contained in *The Automotive Industry* stated that:

... unilaterally cutting car tariffs to 5 per cent post-2000 could well see Australia lose two car producers. If this were to happen, the fallout among component producers would be even more serious.

To deal with this situation the minority report recommended that:

... tariffs on passenger motor vehicles, original equipment and replacement components be maintained at 15 per cent until 2005, with a review to be held in, say, 2003 to consider post-2005 assistance arrangements for the industry.

Government response

The Government received the report from the Commission and followed a middle course between the views expressed by legislating to reduce the automotive tariff to 10 per cent in 2005, and providing \$2.8 billion through the Australian Competitiveness and Investment Scheme (ACIS) to assist the automotive industry with its transition to lower tariffs.

In March 2002 the Treasurer asked the Productivity Commission to report on what assistance arrangements for the automotive industry should be in place beyond 2005. The Productivity Commission's inquiry – *Review of Automotive Assistance* – was released on 13 December 2002.

The Treasurer released the Government's response to this inquiry on 13 December 2002. The Government accepted most of the recommendations, agreeing that:

In recent years, the automotive industry has transformed itself to become a major exporter and innovator. It has also greatly improved its productivity and the quality of its products. But it can do more to become truly internationally competitive.

This transformation has been influenced by reductions in tariffs, which have exposed the industry to increased international competition and also reduce costs for consumers and increased their vehicle choices.

The Government also agreed that support from the ACIS had been important in transforming the Australian automotive industry and should be extended to assist the industry adjust to lower tariffs. The Government therefore announced a \$4.2 billion extension of the ACIS to 2015, and decided to reduce automotive tariffs to 5 per cent in 2010.

The Government rejected the recommendation to raise the threshold for the luxury car tax (and associated depreciation limit) to reflect price movements in the luxury vehicle market as it considers the current threshold and indexation mechanism appropriate. The recommendation regarding payroll tax and stamp duty on vehicle sales and transfers was seen as falling outside the Government's area of responsibility as the States and Territories are responsible for the administration of these taxes.

The *Customs Tariff Amendment (ACIS) Act, No. 9, 2003*, was introduced in the House of Representatives on 25 June 2003. It passed through the House on 8 September 2003 and was introduced into the Senate on 9 September 2003. It passed through the Senate on 16 September 2003 and received Royal Assent on 14 October 2003.

The *ACIS Administration Amendment Act, No. 96, 2003*, which is complimentary to the *Customs Tariff Amendment (ACIS) Act, No. 97, 2003*, passed through Parliament on the same dates.

On 1 January 2005, the automotive tariff rate fell from 15 per cent to 10 per cent, and will fall to 5 per cent in 2010.

Customs Tariff Act 1995 (textile, clothing and footwear)
(Department of Industry, Tourism and Resources)

The *Customs Tariff Act 1995* (the Act) imposes customs duty on goods imported into Australia.

The arrangements relating to textile, clothing and footwear (TCF) in the Act were initially reviewed as part of the 1997 Industry Commission inquiry into the textiles, clothing and footwear industries.

In 2002 the Productivity Commission (the Commission) conducted an inquiry into post-2005 assistance arrangements for the TCF industry.

Review progress

On 19 November 2002, an inquiry by the Commission into post-2005 assistance arrangements for the TCF industry was announced. The Commissioner to the inquiry was Dr David Roberston, assisted by Associate Commissioner Mr Philip Weickhardt.

A position paper was completed in April 2003 and released for public comment. A final report was delivered to the Government on 31 July 2003.

The main recommendations contained in the report included a 5-year pause in tariff reductions from 2005. Tariffs were to be reduced in 2010 and again in 2015, by which time TCF tariffs will be in line with the 5 per cent average tariff applying to manufacturing industries generally. The Commission also recommended that the proposed tariff reductions be accompanied by transitional assistance to help facilitate the adjustment process for the sector.

Government response

The Government announced its response to the inquiry on 27 November 2003. Recommendations relating to tariff reductions were adopted. A \$747 million package to assist the process of adjustment was included in the announcement. The core element of this package is the \$575 million *TCF Post-2005 Strategic Investment Program Scheme 2005* introduced in April 2005 to encourage investment and innovation. A Regulation Impact Statement (RIS) was produced as part of the Government response.

As part of its response the Government announced that it would pause the TCF tariff reductions for five years from 2005. TCF tariffs will be reduced in 2010 and again in 2015, by which time TCF tariffs will be in line with the 5 per cent tariff applying to manufacturing industries generally.

The *Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act 2004* set tariffs accordingly and came into effect on 14 December 2004.

Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991 (Department of Education, Science and Technology)

This *Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991* was repealed by Schedule 1 to the *Education Services for Overseas Students (Consequential and Transitional) Act 2000* [Act No. 166 of 2000] and was replaced in part by the *Education Services for Overseas Students Act 2000* (ESOS Act). The ESOS Act has the broad objectives of:

- ensuring students receive the tuition for which they have paid and in the case of provider collapse, that they receive either alternative tuition or a refund;
- minimising the presence in the industry of providers lacking integrity or who facilitate student breaches of their visa conditions;
- providing greater quality assurance for overseas students; and

- supporting Australia's migration policy.

It should be noted that, pursuant to section 176A of the ESOS Act, the Minister for Education, Science and Training commissioned an independent evaluation of the operation of the Act and its related legislation in December 2003. A final report has now been provided to the department, and it is considering the findings and recommendations being made.

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

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

Review progress

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

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

Government response

The Government response was approved by the Minister on 22 April 2002. AQIS has engaged all relevant export industry consultative groups in the implementation process. Significant progress

has been made on the implementation of the Government's response to the recommendations.

The finalisation of the *Export Control (Meat and Meat Products) Orders 2005* and the *Export Control (Dairy, Eggs and Fish) Orders 2005* brings to a conclusion reviews that have been underway for several years. The old orders were criticised by the review committee for creating unnecessary regulatory burden on exporters and processors, and being too prescriptive rather than outcomes focused. The new orders will see Australia's export industries strategically placed in the world trade environment to maximise their competitive edge. The new orders are consistent with the direction of international trade standards and will enable Australian industries to be innovative and flexible and to take up new technologies.

The recommendation that the Act be amended to include a statement of specific objectives is still to be finalised. The Government supports this recommendation. This legislative change to the Act has been included on the portfolio's legislative calendar.

All other recommendations are being progressed to a satisfactory standard. Implementation of the recommendations in the Report has been monitored by the Quarantine and Exports Advisory Council.

Export Control Act 1982 — Export Control (unprocessed wood)
Regulations
(Department of Agriculture, Fisheries and Forestry)

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

In 2000-01 the Commonwealth undertook a review of the following regulations made under the *Export Control Act 1982*: Export Control (Unprocessed Wood) Regulations, Export Control (Hardwood Wood Chips) Regulations 1996, and Export Control (Regional Forest Agreements) Regulations.

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

Review progress

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

- The Government should remove export controls over sandalwood.
- The Government should consider its position on export controls over plantation-sourced wood following the outcome of the review of the plantation codes of practice for Queensland and the Northern Territory.
 - If those reviews result in removing the need for an export licence for wood sourced from within those jurisdictions because National Plantation Principles are observed, then the regulations become redundant and should be removed.
- The Government should reconsider its position on export controls over hardwood woodchips sourced from native forests and either:
 - remove the requirement for an export licence for any hardwood woodchips or other unprocessed wood produced from wood harvested in a native forest – including those native forests outside RFA regions; or
 - allow the export of hardwood woodchips from regions not covered by an RFA under licence where options for a future comprehensive, adequate and representative forest reserve system would not be compromised by the granting of such a licence.

Government response

Export controls have been lifted on plantation-sourced wood in all States and Territories except Queensland and on wood sourced from native forests in regions covered by RFAs. Queensland is the only State or

Territory not to have an approved Code of Practice for plantations in place and thus the only State where exporters of plantation timber are required to apply for an export licence. It would be inappropriate to remove the relevant regulations before Queensland has a code in place.

Aside from Queensland plantation timber, the total of all other exports requiring a licence is extremely small – less than 2,000 tonnes per year. By far the largest volume of unprocessed wood exports (including wood chips) is from RFA regions and from plantations. The RFA regions are exempt from needing export licences under the unprocessed wood regulations.

Discussions with Queensland on a Code of Practice for plantation timber are being progressed.

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

The *Health Insurance Act 1973* (the Act) establishes the Medicare benefits scheme and sets out the arrangements that apply to the provision of pathology services. The main provisions relating to pathology services are contained in Part IIA. However, other parts of the Act, along with a range of regulations and pieces of delegated legislation, also relate to the provision of pathology services.

A review of all Commonwealth legislation relating to the pathology operating framework was added to the Commonwealth Legislation Review Schedule (CLRS) in 1998-99 and commenced in January 2000. The review was overseen by a steering committee comprised of representatives from the Department of Health and Ageing and Treasury.

Review progress

The final report of the review was approved for public release in February 2003 and is available on the Department of Health and Ageing website:

<http://www.health.gov.au/internet/wcms/publishing.nsf/Content/health-pathology-leg-index.html>

Government response

A Government response to the review was agreed by ministers in January 2004, and is generally supportive of the recommendations. Department of Health and Ageing is working to implement the recommendations as a priority.

In particular, one of the recommendations of the review was the undertaking of a subsequent review into enforcement and offence provisions under the *Health Insurance Act 1973*. This enforcement and offence provisions review has been completed and pending the final Government response to this review, legislation changes will be put forward as a package.

In addition, the Pathology Quality and Outlays Memorandum of Understanding 2004-05 – 2008-09 (MoU) between the Australian Government and the pathology industry was signed in September 2004. Contained in the MoU is an agreement by both parties to undertake a review of the Approved Collection Centres arrangements to ensure that these arrangements remain consistent with the objectives of competition policy. The Approved Collection Centres review will be completed in 2005-06.

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

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

The Act specifies (among other things):

- the role of FSANZ in risk management;
- the FSC as the applicable national standard;

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

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

Review progress

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

Government response

The Government response, agreeing to all 23 recommendations from the NCP review of the Act, was issued on 29 June 2000. The outstanding recommendations involve major changes to IT systems and legislative changes.

Progress has been made on the implementation of outstanding recommendations.

The Act has been amended to more clearly state its objectives and provide for the use of compliance agreements and quality assurance arrangements with importers.

Work continues on the risk assessment that will determine appropriate inspection levels and strategies for risk and surveillance of foods. This work is being done in conjunction with a review of imported food clearance options under the Act. This is to ensure there is provision in the Act for addressing the impact of the proposed inclusion of Primary Production and Processing Standards into the Food Standards Code.

Performance indicators have been developed and an electronic reporting system that will support field activities and the administration of the scheme is nearing completion.

Suitably accredited laboratories are now appointed and permitted to analyse imported food samples for both risk and surveillance categories of food. A number of these laboratories have the capability to report electronically to AQIS, with the balance to develop this function over the next twelve months. In addition to this AQIS now provides electronic notification of results and releases to importers for foods tested.

Intellectual Property Legislation — *Designs ACT 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968, and the Circuits Layout Act 1989*
(Department of Industry, Tourism and Resources)

Review progress

Review of intellectual property legislation commenced in 1999 and the Intellectual Property and Competition Review Committee presented its final report, *Review of the Intellectual Property Legislation under the Competition Principles Agreement*, in September 2000.

Government response

The Government made its response on 28 August 2001.

Nine of the fifteen recommendations on patent, trade mark and design matters that fell within the Department's responsibilities have been fully

implemented. Three matters concerning prior use rights, contracts and compulsory licensing still require legislative changes to be made to the *Patents Act 1990* and one matter relating to parallel importation requires legislative changes to be made to the *Trade Marks Act 1995*. These matters are being drafted and are expected to be introduced to Parliament in 2005. Two recommendations concerning trade mark disclaimers and patent appeals, challenges and enforcements in the Courts were deferred to the ACIP. The Government is currently preparing a response on both of the ACIP reports.

International Air Services Commission Act 1992 and International Air service Agreements
(Department of Transport and Regional Services)

In 1999 the Productivity Commission conducted a review of International Air Services.

Government response

The Government decided to reform the roles and responsibilities of the International Air Services to simplify the processes for allocating capacity to Australian airlines.

These reforms were completed in May 2004 when the International Air Services Commission's (IASC) new policy statement came into force. Final administrative actions to implement changes to the IASC Act were completed in 2004.

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

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

Review progress

The review commenced in December 1997. It was undertaken by a taskforce of officials, headed by the then Federal Office of Road Safety

and including representatives from the then Department of Industry, Science and Resources, the Australian Customs Service, the National Road Transport Commission and Environment Australia. Under the terms of reference the taskforce's role was to 'review and report on the appropriateness of the legislation and its effectiveness and efficiency in improving vehicle safety, emissions and anti-theft standards and recommend to Government and changes that should occur.'

An independent reference committee assisted the review process by ensuring the taskforce's work was independent, strategic and effective by reflecting as broadly as possible the views of the stakeholders. The taskforce received 55 submissions from stakeholders after advertising nationally for input to the review in December 1997 and a further 103 comments on the draft report which was circulated for comment in May 1999.

The review was concluded and made public in August 1999.

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

Government response

In May 2000, following the review, the Government announced new arrangements to administer the importation of used vehicles.

The *Motor Vehicle Standards Amendment Act 2001* commenced on 1 April 2002. Registered Automotive Workshop Scheme (RAWS) also commenced on that date. RAWS became mandatory on 8 May 2003 following a transition period of three years from the announcement of the changes to the arrangements for imported used vehicles on 8 May 2000.

RAWS requires used vehicles to be imported and modified by a registered automotive workshop with approval to place a used import

plate on a vehicle by vehicle basis. This will ensure that used vehicles meet the safety and other legislative requirements for supply to the Australian market.

Work is progressing on other matters arising from the review.

National Health Act 1953 Part VI and Schedule 1 and Health Insurance Act 1973 Part III
(Department of Health and Ageing)

During period 1 July 2004 and 30 June 2005 there have not been any specific reviews of the *National Health Act 1953* (Part 6 Schedule 1) and the *Health Insurance Act 1973* (Part 3). Nevertheless, it is worth noting a number of recent amendments to these Acts.

Review progress

In 2002-03, the Government undertook a review of the regulation of private health insurance. As required by legislation, the Government also tabled an Independent Review of Lifetime Health Cover in Parliament in December 2003.

Government response

In response to the 2002-03 review the Government introduced a number of reforms. The *Health Legislation Amendment (Private Health Insurance Reform) Act 2004* enacting these reforms was passed by Parliament in February 2004. The intention was to remove unnecessary regulation to encourage greater efficiency in health funds and give them more flexibility to compete while protecting high risk groups from exclusion. Measures included deregulation of product approval and introduction of an annual State of the Health Funds report to be published by the Private Health Insurance Ombudsman.

In relation to the product restriction regulations allied health care providers are able to negotiate with private health insurers for rebates for their services under ancillary health cover.

In 2004 the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act 2004* was passed by Parliament. This legislation amended

the *Health Insurance Act 1973* to enable private health insurance funds to pay accommodation and nursing home costs from their hospital tables associated with foot surgery performed on admitted private patients by accredited podiatric surgeons.

Australian Government regulation currently prevents health funds from paying rebates for hospital accommodation and nursing care unless the services are provided by, or on behalf of, medical practitioners, obstetric nurses, dental practitioners and, from 13 January 2005, Commonwealth accredited podiatrists.

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

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

The Office of Regulation Review (ORR) approved the terms of reference for a review of the Act in March 2000.

Review progress

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

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

The report is available on the DEH website at:
www.deh.gov.au/atmosphere/ozone/legislation/legrev.html.

Government response

The Minister for the Environment and Heritage announced measures in response to the review in a press release relating to the 2002-03 Budget. The release identified the following measures to:

- extend the legislation to require importers, exporters and manufacturers of synthetic greenhouse gases to hold a controlled substances licence under the Act;
- require importers of pre-charged refrigeration and air conditioning equipment containing hydrochlorofluorocarbons (HCFCs) or hydrofluorocarbons (HFCs) to be licensed and demonstrate that they have appropriate arrangements in place to manage refrigerants at the end of their serviceable life;
- update the Act to provide for a national uniform approach to end-use controls on ozone-depleting substances and synthetic greenhouse gases; and
- amend the Ozone Protection Reserve to include funding of synthetic greenhouse gas emission minimisation initiatives.

The Government introduced the Ozone Protection and Synthetic Greenhouse Gas Legislation Amendment Bill into Parliament in June 2003. Parliament passed the Bill in December 2003, amending the *Ozone Protection Act 1989* to the *Ozone Protection and Synthetic Greenhouse Management Act 1989*. The amendments:

- extend the import, export and manufacture licensing system for ODS which will also cover synthetic greenhouse gases (SGG) where they are used as alternatives to ODS;
- provide for establishment of national end-use controls on the purchase, sale, handling and disposal of these gases;
- implement the Beijing Amendment to the Montreal Protocol, banning the import and manufacture of bromochloromethane, and banning

trade in certain ozone-depleting substances with non-Protocol countries; and

- broaden the purpose of the Ozone Protection and SGG account to include National Halon Bank revenue and expenditure, and expenditure on ODS phase-out programmes and programmes to minimise ODS and SGG emissions.

DEH has commenced implementation of the amendments. The licensing system for synthetic greenhouse gases and equipment pre-charged with HCFCs or HFCs commenced on 1 April 2004. End use regulations will be developed in consultation with the relevant industries including refrigeration and air conditioning, fire protection, fumigation, foam, aerosol, solvent and laboratory.

Petroleum (Submerged Lands) Act 1967

(Department of Industry, Tourism and Resources)

The review of this Act was included in the national review of Petroleum (Submerged Lands) Acts. See section 1.3.

Radiocommunications Act 1992 and related Acts

(Department of Communications, Information Technology and the Arts)

The main objective of the *Radiocommunications Act 1992* (the Act) and related legislation is to maximise the public benefit by the efficient allocation and use of the radiofrequency spectrum. The legislation also provides for allocation of spectrum for public or community services and an equitable charging system, while supporting the Government's communications policy objectives and Australia's international interests in the consistent and efficient use of the radiofrequency spectrum.

Review of market based reforms and activities were previously undertaken by the Spectrum Management Agency (SMA). In 1997 the SMA merged with Austel to form the Australian Communications Authority (ACA). Subsequently, review of market based reforms and activities are now undertaken by the ACA. This function will fall under the auspices of the ACMA upon proclamation of the new authority.

Review progress

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

Government Response

The former Minister for Communications, Information Technology and the Arts issued a Joint Media Release with the Treasurer on 5 December 2002 announcing the tabling in the Parliament of the reports of the Radiocommunications Review (June 2001) and the Commission's Radiocommunications Inquiry (July 2002) and the Government's responses to the reports.

The two reviews of this Act were established to assess the appropriateness, effectiveness and efficiency of the radiocommunications legislation including whether it is restricting competition between, or imposing costs or benefits on, business.

The majority of the recommendations of the Radiocommunications Review and the Commission's Inquiry Report are being implemented through administrative action by the ACA.

The Radiocommunications Legislation Amendment Bill 2004 will implement the recommendations from the Radiocommunications Review and the Commission's Report accepted by the Government. It will also contain a number of minor additional amendments being sought by the ACA. The department is currently consulting with the ACA on these amendments prior to finalising the Bill.

The Bill has been granted B status for the 2005 Winter sittings.

Trade Practices Act 1974 — 2D exemptions (local government activities) (Department of the Treasury)

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

Following consultations with State premiers and Territory chief ministers, the terms of reference were sent to the Productivity Commission on 2 October 2001.

Review progress

The final report was released on 12 December 2002.

Government response

The Government released its response in December 2003, accepting the recommendations. The required legislative amendments were drafted and incorporated into the Trade Practices Legislation Amendment Bill 2004, which was introduced into Parliament on 24 June 2004. However, this Bill lapsed due to the October 2004 federal election. The required legislative amendments were then incorporated into the Trade Practices Legislation Amendment Bill (No.1) 2005. This later Bill was passed by the House of Representatives on 10 March 2005.

Trade Practices Act 1974 — Part IIIA (access regime) (Department of the Treasury)

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

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

Review progress

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

Government response

The Government released its final response to the Commission's inquiry into the National Access Regime on 20 February 2004. The Government's response supported most of the Commission's proposed reforms. The

Government has consulted with State and Territory governments in developing the final Government response.

On 2 June 2005, the Government introduced the Trade Practices Amendment (National Access Regime) Bill 2005 into Parliament, to give effect to its final response. On 15 June 2005, the Bill was referred to an inquiry by the Senate Economics Legislation Committee.

Wheat Marketing Act 1989

(Department of Agriculture, Fisheries and Forestry)

The *Wheat Marketing Act 1989* (the Act) did not specify its objectives, but in accordance with NCP guidelines, the 2000 NCP review report set out the inferred objectives as being 'for the Australian Government to use its control of wheat exports to ensure direct grower access to marketing services and export markets, and that growers receive the highest net return from sales in export markets.'

The terms of reference for this review were approved in April 2000. The review, with secretariat support provided by DAFF, was conducted by the following three person committee:

- Mr Malcolm Irving, Chair: Chairman of Caltex Australia and the Australian Industry Development Corporation. He is also a director with Telstra, a member of the Supermarket to Asia Council and was Chair of the Australian Horticultural Corporation for nine years;
- Professor Bob Lindner: Executive Dean of the University of Western Australia's Faculty of Agriculture. He was also the faculty's inaugural Professor of Agricultural Economics. He is Chair of the Western Australian Herbicide Resistance Initiative Board and a member of the Export Grains Centre Advisory Council; and
- Mr Jeff Arney: South Australian grain grower, Chair of the South Australian Farmers Federation Grains Council and a past president of the Grains Council of Australia.

Review progress

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

Government response

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

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

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

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

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

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

Another NCP review of the legislation governing the single desk arrangements is required to be conducted before 2010.

1.2.2 Reviews completed, recommendations under consideration

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

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

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

Review progress

The review report was publicly released in August 1999. It contains 12 recommendations addressing the processes in Part IV pertaining to mining and exploration permits.

Government response

The Australian Government is considering its response to three reviews: the National Competition Policy review; the review of the Land Rights

Act by John Reeves QC; and the report of the inquiry into the Reeves review by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. The Government released an options paper on possible reforms in April 2002, and in response, the Northern Territory Government and the Northern Territory Land Councils released a joint submission in September 2003 proposing reforms to the Act. The Australian Government is considering reforms to the Act in light of the Government's broader reform to Indigenous affairs and expects amendments to the Act to be introduced in 2005.

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

The review of this legislation was included in the national review of Agricultural and Veterinary Chemicals Legislation.

Bills of Exchange Act 1909 (Department of the Treasury)

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

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

Review progress

A final report was released in August 2003.

Government response

Treasury has undertaken further consultations with industry to inform the Australian Government's response to the review recommendations.

Industry representatives are expected to provide further information to Treasury in relation to issues raised at the meeting in the near future.

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

(Department of Communications, Information Technology and the Arts)

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

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

The review commenced in March 1999.

Review progress

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

Government response

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

- **Structural diversity in Australian broadcasting.** The Broadcasting Amendment Bill (No 2) 2002 was passed in November 2002. As well as providing a new licensing framework for community television, the Act makes related community broadcasting amendments that will improve the general community broadcasting licensing regime.
- **Ownership and control.** In the 2004 election context, the Government committed to reforming Australia's media ownership laws, while protecting the public interest in a diverse and vibrant media sector. The Government's previous media ownership reform bill lapsed following the calling of the election. This provides an opportunity to consider new approaches to media ownership reform, and, to assist in this process, the Government is consulting with stakeholders as it considers the best means of implementing its commitment.
- **Anti-siphoning.** The Government reviewed the anti-siphoning scheme in 2004. Given the current low penetration rates of pay TV, the Government decided that it is necessary to extend the operation of the anti-siphoning scheme to ensure that as many viewers as possible are able to access culturally significant and nationally important events on free-to-air television. The Government also decided to revise the anti-siphoning list to ensure its ongoing relevance. A new instrument (the Broadcasting Services (Events) Notice (No. 1) 2004) was made to extend the operation of the scheme and implement the amendments to the list. The new list applies to events taking place between 1 January 2006 and 31 December 2010. In addition, in December 2004, the Government introduced a Bill extending the automatic de-listing period under the anti-siphoning scheme from six to 12 weeks. This reform is designed to improve the efficiency of the operation of the de-listing provisions of the anti-siphoning scheme to the benefit of sporting bodies and viewers, by allowing pay TV operators a reasonable opportunity to acquire those unwanted rights, arrange coverage and market the programs to viewers.

- The Online Content Co-Regulatory Scheme commenced in January 2001. The statutory review of the Scheme commenced in May 2002 and the report of the review was tabled in Parliament in May 2004. The review found that, while some types of server level filtering are technically possible given the limited benefits of an internet service provider (ISP) level filtering system, the costs of a mandated requirement to filter do not appear justified. It also found that internet safety would be improved by more active promotion of filtering technologies by Australian ISPs.

In addition, the Government has commenced a series of reviews required under the *Broadcasting Services Act 1992* relating to the regulatory regime for the digital conversion of television broadcasting. During 2004 issues papers were released for public comment on five of these reviews, which relate to whether there should be changes made to simulcast requirements or to the restrictions on multichannelling by free to air broadcasters; the arrangements for commercial broadcasting after 2006; indigenous television broadcasting; under-served market arrangements and the efficiency of spectrum allocation. Further reviews, relating to the high definition television requirements and the duration of the simulcast period, are to take place during 2005. Several of these matters were matters raised in the Productivity Commission report.

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

This legislation regulates the description of goods on labels or other markings applied to goods imported into or exported from Australia. The principal intention of the legislation is to ensure that importers are not able to compete unfairly on the domestic market by misrepresenting the characteristics of imported goods.

Review progress

The review commenced on 3 July 2001.

The review panel consisted of representatives from the Department of Industry, Tourism and Resources, Australian Customs Service, the Department of the Treasury, and the ACCC.

The report was finalised in July 2002.

Government response

The Government response to the report is still under consideration. A further round of ministerial consultation is proposed for the first-half of 2005. Subject to the outcome of that round of consultation it is expected that the Government would be in a position to announce its response to the review later in 2005.

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

The objectives of the *Disability Discrimination Act 1992* (the Act) are:

- to assist in eliminating discrimination against people with disabilities in a range of areas of public life;
- to ensure, as far as practicable, that people with disabilities have the same rights to equality before the law as the rest of the community; and
- to promote recognition and acceptance within the community that people with disabilities have the same fundamental rights as the rest of the community.

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

The ORR approved terms of reference for the review on 9 December 2002.

Review Progress

The Parliamentary Secretary to the Treasurer announced the review and provided terms of reference to the Productivity Commission (the Commission) on 5 February 2003.

Following a public consultation process, the Commission released its draft report on 31 October 2003. The draft report has been followed by a further round of public consultations in January and February 2004. The

final report was provided to the Government in April 2004. The Commission found that the Act generally meets the CPA tests, and has provided net benefits to the Australian community.

Government response

The Government's response to the report was tabled in Parliament on 8 February 2005 (presented out-of-session on the 27 January 2005). The response accepts, either in full, in part or in principle, 26 of 32 recommendations. The Government response appropriately balances the needs and rights of people with disability with government policy and the interests of industry.

The Attorney-General's Department is now working towards implementing the Government response. Much of the response requires legislative amendment. A number of recommendations are directed to the Human Rights and Equal Opportunity Commission. Some have implications for other Commonwealth anti-discrimination legislation which will need to be considered. Other recommendations will require consultation with the States and Territories.

The Government's full response is available at www.ag.gov.au/PCDDA.

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

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

The review was conducted by a taskforce of Australian Government officials, comprising representatives of the Attorney-General's Department, the Australian Transactions Report and Analysis Centre, the Australian Federal Police, the Australian Taxation Office and the Financial Institutions Division of the Department of Treasury. A reference group of two non-government persons, Mr Tom Sherman and Mr Allan Cullen, oversaw the review.

Review progress

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

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

Government response

The recommendations of the taskforce have been considered as a part of Australia's wider consideration of implementing the Financial Action Task Force on Anti-Money Laundering, international anti-money laundering and counter-terrorist financing.

Since the Minister for Justice and Customs announced the endorsement of these international standards in late 2003, Australian Government agencies have undertaken a significant review of Australia's anti-money laundering system. Following extensive consultation with industry, a cost effective anti-money laundering system is being prepared. New reforms to counter terrorist financing will meet international standards and at the same time be viable and responsive to the needs of Australian industry. It is anticipated that new legislation will be introduced to Parliament in mid-2005.

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

(Department of Education, Science and Training)

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

Review progress

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

The West Review report recommendations did not explicitly address competition principles, but recent government reforms however, are aimed at encouraging greater competition in the higher education sector.

Government response

While the Government did not respond formally to the recommendations of the West Review it has recently introduced similar reforms encouraging greater diversity of provision and competition in the higher education sector. These reforms are detailed below.

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

The outcomes of the review, *Our Universities: Backing Australia's Future*, were announced as part of the 2003-04 Budget. Legislation was introduced into Parliament in September 2003 to give effect to the reforms and the *Higher Education Support Act 2003* received Royal Assent on 19 December 2003.

The reforms are critically important for higher education in Australia and their passage is a significant milestone in the economic and social development of this country. The reform outcomes are working towards a sustainable, quality higher education sector promoting equity of participation for all Australians, diversity in mission and greater competition and collaboration across the higher education sector.

Under the new arrangements, higher education providers set their own student contributions for Commonwealth supported places within a range from \$0 to a maximum set by the Australian Government which is no more than 25 per cent above current levels. Fees for nursing and teaching courses, which cover about 14 per cent of students, will be exempt from any increase. Every dollar of student contributions will go directly to institutions to improve quality and reduce class sizes.

As student contribution levels now vary between courses and higher education providers, providers are required to become competitive in terms of cost and course quality, and to focus more on what is important to students. This will see students become much more central to the university experience than they might have been in the past.

Under the reforms higher education providers can increase the maximum number of domestic full fee paying students in any undergraduate course from the previous 25 per cent to 35 per cent, if students want to take up these additional places. The intention of this policy is to enable providers to better respond to student demand in particular areas, and to provide additional educational opportunities and choices for students, which would otherwise not be available.

The reforms give higher education providers access to the funding they need to deliver world-class higher education, with a focus on quality learning outcomes. Laying the foundation for this is an increase in public investment in the sector of around \$2.6 billion over the next five years from 2004. The Australian Government will provide some \$11 billion over ten years in new support for higher education from 2004. There will be almost 36,000 new Commonwealth supported student places added to the higher education sector between 2004 and 2008 and more funding for each Commonwealth supported student, linked to improvements in how higher education providers are managed.

Vocational education and training funding

The *Vocational Education and Training Funding Act 1992* (the Act) sets the minimum amount of vocational education and training funding to be distributed by the Australian National Training Authority (ANTA) to the States and Territories for capital and recurrent purposes and for national projects. The amount to be paid to ANTA for distribution is determined by the minister in accordance with the *Australian National Training Authority Act 1992* (ANTA Act) and the ANTA Agreement which is made pursuant to the ANTA Act, up to the maximum amount set by the ANTA Act in one year.

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

approves the framework for the Australian Government's negotiating position.

The ANTA Agreement for 2001-2003 ceased on 31 December 2003. Negotiations between the Australian Government and the States and Territories for a new Agreement concluded with agreement to a roll over arrangement for 2004. A further rollover was agreed to cover the first six months of 2005.

Following the 2004 federal election the Prime Minister announced that ANTA would be abolished from 1 July 2005 and its responsibilities taken into the department. A ministerial council on vocational education and training is to be established to ensure continued work on harmonisation of a national system of standards, assessment and accreditation, with goals agreed in a Commonwealth-State funding agreement.

The department is proceeding with work on developing an offer to the States and Territories for a new agreement, to be effective from 1 July 2005. New legislation will be introduced to establish the new Commonwealth-State funding arrangements for vocational education and training.

Navigation Act 1912

(Department of Transport and Regional Services)

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

The coastal trade provisions of Part VI of the Act were scheduled for review in 1998-99. The Shipping Reform Group undertook a comprehensive review of the shipping industry including those sectors to which Part VI apply. The Shipping Reform sought submissions from all sectors of the shipping industry and acted as a substitute for the Part VI review.

In December 1997, the Government decided to review the remaining provisions of the Navigation Act in two stages. The first stage considered repeal of employment related matters more appropriately dealt with under the *Workplace Relations Act 1996*. This review stage was completed in 1998 and resulted in the Navigation Amendment (Employment of Seafarers) Bill 1998, which was introduced into Parliament on 25 June 1998 and passed by the House of Representatives on 31 March 1999. During the Senate debate on the Bill, a significant number of items in the Bill were rejected. The Bill lapsed on the calling of the 2001 election.

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

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

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

Review progress

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

Government response

The Government's consideration of these reviews was presented in a speech to the industry in 2004 which detailed the Government's shipping policy in respect of coastal shipping and included reforms associated with the administration of the coasting trade provisions and the approach to shipping registration reform (see below).

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

Review progress

Terms of reference approved in 1996-97.

Review team comprised officials from the Department of Workplace Relations and Small Business, the Bureau of Transport Economics and Australian Maritime Safety Authority (AMSA), with a senior executive level steering committee from the department and AMSA, and an independent reference committee.

The objective of the *Shipping Registration Act 1981* was to provide Australia with its own regime for the registration of ships.

The report was finalised in December 1997. Main recommendations were:

- to restructure the Australian Register of Ships into four parts;
- to consider ways that holders of non-mortgage securities might be recognised by the *Shipping Registration Act 1981* (the Act);
- added protection be given to mortgagees of bareboat chartered ships by amending the Act;
- to provide for registration of ships under construction by amending the Act and creating in a separate part of the Register;
- the concept of homeport to be retained but the list of 'approved' home ports be abolished; and

- the Register be available on-line.

Government response

The Government's consideration of this review was included in a speech to the industry in 2004 which detailed the Government's shipping policy in respect of coastal shipping and included reforms associated with the administration of the coasting trade provisions and the approach to shipping registration reform.

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

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

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

Review progress

The review report was released on 21 June 1999.

Government response

The Government is considering its response to the review of section 51(2) of the TPA.

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

The Government intends to amend the TPA by applying modified competitive conduct rules in Part IV (Restrictive Trade Practices) to intellectual property licensing transactions, and exempting the *Plant Breeders' Rights Act 1994* (Cth) from the modified competitive conduct rules.

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

The objective of Part X of the TPA is to ensure that Australian exporters and importers in all States and Territories have access to liner (scheduled) cargo shipping services of adequate capacity, frequency and reliability, at freight rates that are internationally competitive.

Review progress

The Productivity Commission's inquiry report was released to Government on 23 February 2005. The report had not been tabled in Parliament as at 30 June 2005.

Government response

The Government is currently considering its response.

1.2.3 Reviews commenced but not completed

Defence Housing Authority Act 1987
(Department of Defence)

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

This review is yet to be completed.

There is also an interdepartmental committee reviewing DHA's governance arrangements and legislation. One of its goals is to identify inconsistencies between DHA's governing legislation and to amend the Act as necessary to promote consistency and eliminate duplication. The IDC findings will also inform the departmental review of the DHA in terms of the Uhrig report.

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

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

The examination has been delayed pending the resolution of the challenges concerning Australia's quarantine regime in the World Trade Organisation (WTO) and assessment of any administrative and legislative actions that might become necessary as a result.

1.2.4 Reviews not commenced

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

A review of the *Customs Act 1901* Part XVB and *Customs Tariff (Anti-dumping) Act 1975* has been deferred to allow implementation of Government reforms improving Australia's anti-dumping and countervailing duty mechanisms. To date, the Government has not finalised the timing of manner of a review of the legislation relevant to anti-dumping and countervailing matters.

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

At the time the CPA was established, the *Dairy Produce Act 1986* (the Act) specified the objectives, functions and administrative requirements of the Australian Dairy Corporation (ADC) (including licensing of dairy exports to markets with access restrictions), and provided for the operation of the Australian Government's Domestic Market Support scheme. Since this time, the Australian dairy industry has undergone significant reform and the Act has substantially evolved.

On 30 June 2000, farm gate prices for drinking milk were deregulated and the Australian Government Domestic Market Support scheme ceased to exist. On 1 July 2003, amendments to the Act facilitated the merger of the Dairy Research and Development Corporation and the ADC into one Corporations Act company, Dairy Australia. The Act does not provide for the new privatised entity to undertake any single-desk selling arrangements. Export control functions transferred from the ADC are now the responsibility of the department. Regulations governing certain types of cheese products entering the regulated markets of the European Union (EU) and United States (US) came into effect from 1 January 2004.

A review of the Act was scheduled to take place in 1998-99. However, on the basis of these substantial legislative changes occurring over time, the Prime Minister and the Parliamentary Secretary to the Treasurer agreed to defer the review of the Act until all industry reforms had been completed in mid-2003.

In its 2004 assessment the NCC determined that the only remaining restrictions under this Act were necessary to meet the requirements of access to the EU and US cheese markets, and that such access is allocated among Australian exporters in a manner that restricts competition to the least extent possible. The NCC therefore assessed that CPA clause 5 obligations had been met.

Defence Act 1903 (army and air force canteen services regulations) (Department of Defence)

This review had not commenced by 30 June 2005. The regulations do not raise any competitive neutrality issues.

This Act is currently being reviewed internally.

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

The review had not commenced by 30 June 2005. However, ongoing examination of the scheme's consistency with NCP will occur in the context of providing advice to the minister regarding follow-on arrangements when the contract for the supply of subsidised home loans expires in December 2006.

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

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

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

The remaining regulations relevant to the CLRS were:

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

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

These export efficiency regulations carry over the export control powers including the Corporate Permission and Export Licences that were in

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

HAL administers these arrangements, and includes annual performance reviews, a 3-year net public benefit review, which will include a RIS, and a 10-year legislation review in accordance with the CPA.

Mr Richard Ryan AO is the independent Chairman of the Steering Committee for the 3-year review, together with representatives from HAL and DAFF.

Review progress

The 3-year review recommended that the dried grape export licensing should be retained on the basis that HAL can establish improved market intelligence services. The review committee believes that if these services cannot be established by HAL before the next 3-year review, then the requirement for licences in these cases could be reconsidered. Recommendations were also made to improve the overall efficiency of the Order by the removal of specified processing standards, removal of the requirement for processing premises to be licensed and the removal of the requirement for exporters to have export finance insurance and for their financial security to be checked.

The review committee has finalised its report which is expected to be considered by the Board of HAL on 10 May 2005.

Government response

Government has not yet had the opportunity to respond. It is likely the Minister for Agriculture Fisheries and Forestry will receive the review report from HAL for his consideration in May or June 2005.

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

This review had not commenced by 30 June 2005. The department is examining whether a review of the Act is required.

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

Both Acts will be repealed as part of the implementation of the Downstream Petroleum Reform Package (Oilcode).

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

This Review had not commenced by 31 March 2005. The department is examining whether a review of the two sets of principles is required. The principles are the subject of a separate internal review.

1.2.5 Legislation deleted from the CLRS

This section identifies legislation deleted from the CLRS during the period from 1 July 2004 to 31 March 2005. Information on reviews deleted in previous reporting periods is available in earlier annual reports (available at: www.treasury.gov.au).

No legislation was deleted from the CLRS during this time period.

1.3 Legislation subject to national review

The CPA provides that where a review raises issues with a national dimension or effect on competition (or both), the party responsible for the review will consider whether the review should be undertaken on a national (inter-jurisdictional) basis. Where this is considered appropriate, other interested parties must be consulted prior to determining the terms of reference and the appropriate body to conduct the review. National reviews do not require the involvement of all jurisdictions.

The scheduled reviews of the following Australian Government legislation have been incorporated into national reviews.

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

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

The review was commissioned by the Victorian Minister for Agriculture and Resources on behalf of Australian Government and State and Territory ministers for agriculture/primary industries following a decision by the then Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ).

Review progress

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

Government response

On 3 March 1999 the Standing Committee on Agriculture and Resource Management (SCARM) agreed to publicly release the Report and established a jurisdictional signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) working group to prepare an inter-governmental response to the report's recommendations. SCARM and Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ) endorsed the inter-governmental response to the review in January 2000. The COAG Committee on Regulatory Reform cleared the response.

Following on from consideration of the recommendations in the review and preparation of the inter-governmental response, a number of

processes were commenced to more closely examine issues of concern. An interjurisdictional taskforce was established by SCARM to implement the recommendations covering reforms to a number of different aspects of the National Registration Scheme for Agricultural and Veterinary Chemicals. The NCP reforms relating to the regulation of low-risk chemicals were given effect by amendments to Commonwealth agvet chemicals legislation that were enacted in February 2003. The reforms relating to off-label chemical use, veterinary surgeons' exemptions and control of use licensing have been implemented through relevant state and territory agvet chemicals legislation.

Working groups were established to further examine and progress the review recommendations relating to manufacturer licensing, cost recovery and use of alternative assessment providers. Reports of these working groups have been finalised, with the outcomes/recommendations of the investigations into cost recovery and use of alternative assessment providers being endorsed by Primary Industries Standing Committee (PISC), formerly known as SCARM, in late 2002.

Quality Assurance

The final report of the Manufacturers Licensing Working Group recommended Australian Pesticides Veterinary Medicines Authority (APVMA), previously known as the National Registration Authority for Agricultural and Veterinary Chemicals (NRA), develop and adopt other means to ensure the quality of active constituents and agricultural chemical products. On 1 May 2004, the APVMA introduced a new scheme to address the quality of the active constituents of agricultural chemical products through revision of existing data requirements and standards.

APVMA Cost Recovery

The NCP reforms of the cost recovery arrangements for the APVMA have taken some time to finalise due to widely divergent views within the agvet chemicals industry and with user groups on the proposed new cost recovery framework. A draft cost recovery impact statement (CRIS) on the proposed fee structure was released for public comment in December 2003. The proposed changes were subsequently deferred to allow for a comprehensive response to a range of issues raised during the

public consultation phase. A revised draft CRIS was released for public comment on 17 November 2004. Following this consultation, a cost recovery model for the APVMA has been finalised, with the release of a final CRIS in March 2005. The *Agriculture and Veterinary Chemicals Legislation Amendment (Levy and Fees) Act 2005*, which implements new cost recovery arrangements, received royal assent on 1 April 2005. The associated regulations are currently being drafted and it is anticipated that they will be introduced in late May in order for the new fee and levy structure to commence on 1 July 2005.

Public health and safety

In September 2002, PISC endorsed the final report of the Assessment Services Working Group. DAFF and DHA subsequently developed an operating framework for the provision of human health assessments and advice on human health risk management to the APVMA. The framework includes provision for contestability of some work subject to certain conditions. The framework was endorsed by Federal Cabinet in the context of its December 2003 response to the *Review of Administrative Arrangements for Commonwealth Public Health and Safety Regulation*.

Data protection

The Government considered the report's recommendations in relation to protection of data associated with AgVet chemicals and agreed to an enhanced data protection mechanism. The components of the data reform package for approval of active constituents and registration of chemical products have been given effect under legislation to implement Australia's obligations under the Australia US Free Trade Agreement, that is, the *US Free Trade Agreement Implementation Act 2004*, which commenced on 1 January 2005. The remainder of the legislation to implement the data protection reform package is currently being drafted for introduction into Parliament in the first half of 2005.

Other

The intergovernmental response rejected the report's recommendation with respect to efficacy and decided to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is appropriate. In its 2003 assessment report, the NCC concluded that, '... the risks involved in using chemicals with inadequate efficacy may be considerable, and that the requirement for "appropriateness" assessment

does not appear to be a costly restriction, the Council considers that there is a net public interest case for retaining “appropriateness” assessment.’

The report’s recommendation relating to the licensing of aerial spraying businesses and operators is being progressed in the PISC through a working group chaired by Victoria.

Evaluation of Mutual Recognition Schemes

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

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

The Trans-Tasman Mutual Recognition Agreement (TTMRA) is an arrangement between the Commonwealth, State and Territory governments of Australia and the Government of New Zealand. It represents a significant step in developing an integrated trans-Tasman economy. It facilitates the trade in goods between Australia and New Zealand and enhances the freedom of individuals to work in both countries.

The two basic principles of the TTMRA are that:

- a good that may legally be sold in Australia may be sold in New Zealand, and vice-versa; and
- a person registered to practise an occupation in Australia is entitled to practise an equivalent occupation in New Zealand, and vice-versa.

There are some exceptions and qualifications to these principles.

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

As the MRA is a national scheme, all jurisdictions agreed to a national review by the COAG CRR, with representatives from Queensland (Chair), the Australian Government, New South Wales and Western Australia.

Review progress

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

Government response

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

The recommendations of the review and the concerns expressed by Queensland and Victoria were taken up in the 2003 Evaluation of the Mutual Recognition Schemes.

The 2003 review was conducted in two stages, with the first stage involving the Productivity Commission providing a commissioned research paper assessing the benefits of the agreements and scope for improvements. The Productivity Commission (the Commission) study aimed to assess whether the Trans-Tasman Mutual Recognition Arrangement and MRA are:

- fostering and enhancing trade and workforce mobility between the Commonwealth, States and Territories and New Zealand;

- enhancing the international competitiveness of both Australian and New Zealand business; and
- enhancing the capacity of Australia and New Zealand to influence international standards relating to product descriptions and registration of occupations.

The Commission released its final paper on 17 October 2003. The review found that the mutual recognition schemes have been effective overall in achieving their objectives of assisting the integration of the Australian and New Zealand economies and promoting competitiveness.

The Commission's review was then considered by an officers group of the CRR, including New Zealand representatives and an interim report provided to COAG and the New Zealand Government. COAG and the New Zealand Government have asked for a final report from the CRR, which is due to be submitted in the very near future.

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

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

Review progress

The review's terms of reference were approved by the ORR on 28 October 1999. A review committee of five members was drawn from the Australian Government Department of Industry, Tourism and Resources, the Victorian Department of Natural Resources and the Environment, the Northern Territory Department of Mines and Energy and the Australian Bureau of Agricultural and Resource Economics. At the ANZMEC Ministerial Council meeting held on 25 August 2000, the Council considered the review reports and resolved to adopt the review

recommendations. These contained proposed responses to recommendations put forward in an April 2000 independent consultant's report by ACIL Consulting Pty Ltd.

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

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

Government response

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

This included agreement to two specific legislative amendments. The first related to potential compliance costs associated with retention leases and the second was to expedite the rate at which exploration acreage can be made available to subsequent explorers. The required amendments to the Australian Government's legislation were effected under the *Petroleum (Submerged Lands) Amendment Act 2002*. Amendment and rewrites of the counterpart State and Northern Territory legislation will follow.

1.3.1 Other national reviews with Commonwealth involvement

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

Drugs, poisons and controlled substances legislation

The State, Territory and Australian governments commissioned a review to examine legislation and regulation which imposes controls over access to, and supply of, drugs, poisons and controlled substances. An

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

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

Submissions against the terms of reference were invited and these informed the development of the options paper, which was released for comment in February 2000. A draft report was released in September 2000 and provided a further opportunity for interested parties to comment. The final report was publicly released in January 2001.

Review progress

The review's report and comments on the report, prepared by a working party of the Australian Health Ministers Advisory Council (AHMAC), were forwarded to COAG by the Australian Health Ministers' Conference in June 2004. COAG endorsement was completed in June 2005.

The agreed timeframe for implementation of the report recommendations is 12 months from COAG endorsement.

Government response

Since the release of the report of the Galbally review, the Australian and New Zealand Governments have agreed to establish a joint agency (the Agency) for the regulation of therapeutic products. Australia's Therapeutic Goods Administration (TGA) and the New Zealand Medicines and Medical Devices Safety Authority (Medsafe) will be replaced by a single agency accountable to both the New Zealand and Australian Governments.

A project team of Australian and New Zealand officials is continuing to develop the final details of the regulatory framework and the legislation to regulate therapeutic products in both countries. Taking into account that the therapeutic goods legislation is to be repealed in the future, the Government response to Galbally review provides that those recommendations that require Commonwealth legislative change be

implemented as part of the new trans-Tasman legislation. It is anticipated that the consultation process with industry on the new legislation will start in early 2006.

The TGA is continuing to work with relevant health officials in the Australian States and Territories and New Zealand to coordinate those changes required to state/territory legislation to implement certain recommendations of the review and the development of the new trans-Tasman legislation. Some States and Territories have already implemented the recommendations included in the review (as varied slightly by the Government response) which do not require changes to Commonwealth legislation.

Food Acts

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

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

Review progress

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

Government response

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

All jurisdictions agreed to use their best endeavours to introduce into their respective parliaments legislation based on the model food Act by 3 November 2001.

Pharmacy regulation

In 1999, the NCP Review of Pharmacy Regulation examined state and territory legislation relating to pharmacy ownership and registration of pharmacists, together with Australian Government legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits.

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

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

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

Review progress

In February 2000, the review released its final report.

Government response

In 2000, COAG referred the final report to senior officials for consideration by a working group. The working group was asked to

consider the review report mindful of factors unique to the practice and regulation of pharmacy in Australia.

In August 2002 the Government released the COAG working group's response to the final report which is available at: www.pm.gov.au/news/media_releases/2002/media_release1768.htm

The full response of the COAG working group can be accessed at: www.health.gov.au/haf/pharmrev/index/htm.

In May 2004, the Australian Government informed States and Territories that certain changes to the ownership of pharmacies, to move toward the reforms recommended in the Wilkinson Review process, would ensure the pharmacy issue would not be an impediment to the release of competition payments so long as other reforms identified by the NCC were proceeded with as soon as possible.

1.4 New and amended regulation (enacted since April 1995)

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

The Prime Minister's 1997 *More Time for Business*⁹ policy statement, prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Australian Government regulation that imposes costs or confers benefits on business.

1.4.1 Regulation Impact Statements

In order to meet CPA obligations, promote effective and efficient regulation and make transparent the possible impact of proposed

⁹ Commonwealth of Australia, *More Time for Business*, statement by the Prime Minister, the Hon John Howard MP, 24 March 1997, Canberra.

legislation, a RIS must be prepared for all proposed new and amended Australian Government regulation with the potential to restrict competition, or impose costs or confer benefits on business (see Box 4). The RIS must clearly identify a problem and relevant policy objective and assess the costs and benefits of alternative means of fulfilling the objective.

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

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

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

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

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

The Australian Government's overall performance against the RIS requirements, incorporating compliance for new or amended primary legislation, subordinate legislation, quasi-regulation and treaties, is

assessed in detail in the Productivity Commission report *Regulation and its Review 2004-05*.

The number of RISs required in 2004-05 was lower than in previous years, only 85 regulatory proposals introduced by the Australian Government required a RIS at the decision-making stage. Of these, 71 were prepared, of which 68 were assessed by the ORR as being of an adequate standard. Accordingly, the RIS process compliance rate at the decision-making stage was 80 per cent. This rate is lower than that achieved in the previous year.

Of the RISs prepared at the decision-making stage for regulatory proposals introduced via Bills, 76 per cent were adequate (compared with 94 per cent in 2003-04). At the tabling stage, 100 per cent were adequate (compared with 95 per cent in 2003-04).¹⁰

In the case of disallowable instruments (subordinate legislation and regulation), 83 per cent of the RISs prepared at the decision-making stage were adequate (compared with 91 per cent in 2003-04) and 84 per cent were adequate at the tabling stage (compared to 95 per cent in 2003-04).

1.4.2 Legislation enacted from 1 July 2004 to 30 June 2005 that may restrict competition

There were seven proposals introduced via Australian Government legislation in the period 1 July 2004 to 30 June 2005 identified by the ORR as having the potential to restrict competition (see Table 1.1). The potential impact on the community of these regulations was considered to be of relatively low significance. The impact is discussed in published RISs and will depend in part on how the various legislative provisions are implemented and administered by regulators.

10 Productivity Commission, *Regulation and its Review 2004-05*, Annual Report Series, Productivity Commission, Canberra, 2005, p 19.

Table 1.1: Selected Australian Government legislation introduced into Parliament between 1 July 2004 and 30 June 2005 having the potential to restrict competition

Name of legislation/regulation
China Approved Destination Status
Broadcasting Services (Events) Notice No. 1 of 2004 (Amendment No. 1 of 2005)
Bankruptcy Amendment Regulations 2004 (No. 1)
Consumer Protection Notice No. 9 of 2004 — Consumer Product Safety Standard: Portable Fire Extinguishers: Aerosol Type
Pharmaceutical Benefits Determination under subsection 99L(1) of the <i>National Health Act 1953</i> , (Determination No. PB 14 of 2004 under s.99L(1) of the <i>National Health Act 1953</i>)
Fuel Quality Standards Amendment Determination 2004 No. 1
Motor Vehicle Standards Amendment Regulations 2005 (No. 1)

2 Competitive neutrality

2.1 Why implement competitive neutrality?

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

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

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

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

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

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

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

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

2.1.1 Which Government activities are subject to competitive neutrality?

The Commonwealth Competitive Neutrality Policy Statement (CNPS) deems all Government Business Enterprises (GBE) and their subsidiaries, Commonwealth Companies (formerly referred to as Commonwealth Share-Limited Companies) and business units to be significant business activities and, consequently, they are required to apply competitive neutrality principles.

- GBEs are either Commonwealth Authorities or Commonwealth Companies prescribed by the regulations under the Commonwealth Authorities and Companies Act 1997 (CAC Act) (see section 2.2.1).
- Commonwealth Companies (previously referred to as Commonwealth Share-Limited Companies) are companies established under the Corporations Act 2001 in which the Australian Government has a controlling interest (see section 2.2.1). However, it does not include a company in which the Australian Government has a controlling interest through one or more interposed Commonwealth Authorities or Commonwealth Companies. A Commonwealth Company is governed by the CAC Act, and is referred to as a CAC Act body.

- Business units are identifiable parts of a Financial Management and Accountability Act (FMA Act) Agency that have the primary objective of trading goods and services in the market, for the purpose of earning a commercial return (see section 2.2.2). The management and accounting structures of business units are separate from other parts of the overall organisation.

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

- other commercial activities undertaken by non-GBE agencies prescribed by regulation under the FMA Act, Commonwealth Authorities or Departments, with a commercial turnover of a least \$10 million per annum (see section 2.2.3);
- baseline costing for activities undertaken for market-testing purposes (see section 2.2.4); and
- public sector bids (see section 2.2.4).

To be considered a business the following criteria must be met:

- there must be charging for goods and services;
- there must be an actual or potential competitor either in the private or public sector, that is, users are not restricted by law or policy from choosing alternative sources of supply; and
- managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Other business activities (not listed above) are subject to the complaints mechanism and may be required to apply competitive neutrality if a complaint against them is upheld (see section 2.2.5). These business activities may choose to apply competitive neutrality on a notional basis, to preclude complaints.

Competitive neutrality is required to be implemented only where the costs of this course of action do not exceed the benefits.

2.1.2 What does the application of competitive neutrality require?

The *Australian Government Competitive Neutrality Guidelines for Managers* (February 2004) provides assistance with the practical application of the competitive neutrality principles, as identified in the CNPS, to a wide range of Australian Government business activities.

In general terms, competitive neutrality implementation involves:

- adoption of a corporatisation model for significant GBEs;
- payment of all relevant Commonwealth and state and territories direct and indirect taxes or tax equivalents;
- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;
- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of competitive neutrality components is not simply accommodated through a reduction in profit margin);
- compliance with those regulations to which private sector competitors are normally subject, for example, planning and approvals processes; and
- pricing of goods and services provided in contestable markets to take account of all direct costs attributable to the activity and the applicable competitive neutrality components.

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

Example 1

Government businesses may compete predominantly against private or other government organisations that are recipients of special arrangements in relation to the payment of taxes. In these circumstances,

the government business is only required to calculate its tax liability in a comparable manner to its competitors.

Example 2

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

Box 5 clarifies some common misconceptions with regard to competitive neutrality.

Box 5: Competitive neutrality — some misconceptions

- Competitive neutrality does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as CSOs.
- Competitive neutrality does not have to be applied to Australian Government business activities where the costs of implementation would outweigh the expected benefits.
- Competitive neutrality is neutral with respect to the nature and form of ownership of business enterprises. It does not require privatisation of Australian Government business activities, only corporatisation. Where the Government decides to privatise a former public monopoly, the requirements of Clause 4 of the CPA must be met (see Chapter 3).

Box 5: Competitive neutrality — some misconceptions (continued)

- Competitive neutrality does not require outsourcing of Australian Government activities – but when public bids are made under market-testing arrangements, they must comply with competitive neutrality. As a result, in-house units should not have an unfair advantage over other bidders.
- Regulatory neutrality does not require the removal of legislation that applies only to the GBE or agency (and not to its private sector competitors) where the regulation is considered to be appropriate. However, legislation that restricts competition may be reviewed under the Commonwealth legislation review programme (see Chapter 1).

2.1.3 Community Service Obligations

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

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

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

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

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

CSOs should be funded from the purchasing portfolio's budget, with costs determined as part of a commercially negotiated agreement. CSO agreements should include similar requirements as applied to other activities, that is, these activities should be able to pay taxes and earn a commercial rate of return (as if contracted out).

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

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

2.2 Australian Government entities and activities subject to competitive neutrality

Portfolio ministers are responsible for ensuring that all significant business activities within their portfolio comply with established competitive neutrality requirements.

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

2.2.1 GBEs and Commonwealth Companies

GBEs and Commonwealth Companies are required to have their competitive neutrality arrangements approved by the Minister for Finance and Administration and the responsible portfolio minister. Competitive neutrality requires that GBEs, *inter alia*:

- pay all Commonwealth direct and indirect taxes, and state indirect taxes or tax equivalents;
- earn a commercial rate of return on assets as determined by the Minister for Finance and Administration and the responsible portfolio minister (the Treasurer may also be consulted);
- for Commonwealth Companies, financial targets are to be established and monitored by the responsible parties;
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder minister(s) based on stand-alone credit rating advice; and
- general Government sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from the DOFA, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a competitive neutrality adjustment may be required.

2.2.2 Business units

Competitive neutrality arrangements applied to business units are to be approved by the responsible portfolio minister. Competitive neutrality requires business units to, *inter alia*:

- pay FBT and GST, as specific legislation makes the Commonwealth notionally subject to these, unless an exemption is available for reasons other than their public ownership;
- operate under a tax-equivalent regime for remaining Commonwealth and state and territory taxes by calculating their tax liability in a comparable manner to their competitors and make an equivalent payment to the Official Public Account (OPA);
- achieve financial targets for some activities;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio minister based on stand-alone credit rating advice; and
- general Government sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from DOFA, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a competitive neutrality adjustment may be required.

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

Competitive neutrality arrangements applying to significant commercial business activities provided by non-GBE agencies prescribed by regulation under the FMA Act, Commonwealth authorities or departments with a commercial turnover of at least \$10 million per annum are to be approved by the relevant portfolio minister. The competitive neutrality guidelines require significant business activities to, *inter alia*:

- operate under a tax-equivalent regime by calculating their tax liability in a comparable manner to their competitors and make an equivalent payment to the OPA;
- for non-GBE Authorities, meet the required 'commercial rate of return on assets target' set by the responsible portfolio minister in

consultation with the Minister for Finance and Administration (the Treasurer may also be consulted);

- other significant business activities subject to competitive neutrality are also required to achieve financial targets;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio minister based on stand-alone credit rating advice; and
- general Government sector agencies that borrow funds are usually required to borrow from the Budget. Budget debt is sourced from DOFA, and in general, will not require any debt neutrality adjustments. However, if the debt is provided to the portfolio department then a competitive neutrality adjustment may be required.

2.2.4 Market testing

Market testing (previously referred to as competitive tendering and contracting) involves inviting tenders for the provision of relevant services and evaluating those tenders against predetermined selection criteria. Competitive neutrality arrangements should be applied to all public sector bids and baseline costing exercises for activities subject to market testing arrangements. In practice this means:

- when undertaking market testing to determine whether or not to tender competitively for the supply of a particular good or service, competitive neutrality requirements are to be incorporated when undertaking baseline costing exercises;
- competitively tendering for the supply of a good or service is to be regarded as a commercial activity. Any baseline costing exercise needs to reflect the full cost of providing the good or service:
 - this includes attribution for: any appropriate costs; payment of FBT and GST (on direct purchases); remaining Commonwealth and state taxes; debt neutrality charges; regulatory neutrality charges; and a notional amount equivalent to any public liability insurance premiums a private sector contractor may be required to pay; and

- incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as government-furnished, baseline costing exercises do not need to include a rate of return on such capital.

Should a public sector bid be successful, the business activity would need to assess the application of competitive neutrality in accordance with the *Australian Government Competitive Neutrality Guidelines for Managers*. Non-compliance could result in a complaint being made to the Australian Government Competitive Neutrality Complaints Office (AGCNCO) (see section 2.3).

2.2.5 Other Australian Government business activities

There are a number of smaller Australian Government business activities for which the application of competitive neutrality principles is being considered or undertaken. They may also be required to implement competitive neutrality as a result of a complaint to the AGCNCO (see Section 2.3).

These business activities have to earn a commercial rate of return (set by their parent agency), pay GST and FBT (unless exemptions are available for reasons other than Government ownership) and make a notional adjustment to their cost base for remaining Commonwealth and state indirect taxes.

Other competitive neutrality costs may be incurred on an (auditable) notional basis, for example, debt neutrality charges.

2.3 Complaints alleging non-compliance with competitive neutrality principles

The AGCNCO is an autonomous unit within the Productivity Commission. It was established under the *Productivity Commission Act 1998* to receive complaints, undertake complaint investigations and advise the Treasurer on the application of competitive neutrality to Government business activities.

Contact details are provided below:

Australian Government Competitive Neutrality Complaints Office
PO Box 80
BELCONNEN ACT 2616
Telephone: (02) 6240 3327
Facsimile: (02) 6253 0049
Website: www.pc.gov.au/agcnco/

Any individual, organisation or government body may lodge a formal written complaint with the AGCNCO on the grounds that:

- an Australian Government business activity has not been exposed to competitive neutrality arrangements (including a commercial activity below the \$10 million per annum turnover threshold);
- an Australian Government business activity is not complying with competitive neutrality arrangements that apply to it; or
- current competitive neutrality arrangements are not effective in removing an Australian Government business activity's net competitive advantage, which arises due to government ownership.

Where the AGCNCO considers that competitive neutrality arrangements are not being followed, it may directly advise government business entities as to the identified inadequacies and actions to improve compliance. If a suitable resolution to a complaint cannot be achieved in this manner, the AGCNCO may recommend appropriate remedial action or that the Treasurer undertake a formal public inquiry into the matter.

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

2.3.1 Complaints received during the period 1 July 2004 and 30 June 2005

In the period 1 July 2004 to 30 June 2005, the AGCNCO carried out one formal investigation. Details of this investigation and progress with implementing recommendations from earlier competitive neutrality investigations are detailed below.

Investigations for the period 1 July 2004 to 30 June 2005

EDI Post

On 27 April 2004 Chandler Enterprises lodged a competitive neutrality complaint with the AGCNCO against EDI Post, a business unit of Australia Post.

Chandler Enterprises alleged that, contrary to competitive neutrality principles, mail house services undertaken by EDI Post are priced below commercial rates and derive an advantage in the market through access to details about the mail volumes of competitors' clients.

The AGCNCO has completed its investigation and found that EDI Post is setting prices that are in accordance with competitive neutrality principles and there is no evidence that EDI Post has obtained information, from other areas of Australia Post, on the major clients of competing mail houses, which could provide it with a competitive advantage.

Consequently, the AGCNCO found that no further action is required in relation to this complaint.

Progress on outstanding AGCNCO competitive neutrality investigations

Australian Valuation Office

The Australian Valuation Office (AVO) is a business unit operated by the Australian Taxation Office. The AVO provides valuation services to government departments and the private sector. These include appraisals of property and other assets; special purpose valuations of

property for capital or rental value; plant and equipment valuations; and corporate valuations for consolidation and taxation purposes. The AVO has been subject to competitive neutrality since 1996.

On 4 November 2003, Herron Todd White Pty Ltd (Herron) lodged a complaint with the AGCNCO alleging that the pricing regime used by the AVO in tendering fails to reflect the full costs of service provision.

The AGCNCO published its report on 21 May 2004, suggesting that an increase in the professional indemnity insurance premium paid by the AVO was required on competitive neutrality grounds. The AGCNCO recommended that the Department of Treasury and the Department of Finance and Administration (DOFA) institute a process to determine the extent of the increase required.

A resolution has now been reached. The AVO intends to seek independent advice regarding the professional indemnity premium it would face were it to seek insurance outside Comcover. Should this market testing determine that the premium for the AVO should be higher than that charged by Comcover, the AVO will adjust its cost base to reflect notionally this higher market premium and pay any net competitive neutrality advantage into the Government's consolidated revenue as required.

2.4 Australian Government actions to assist competitive neutrality implementation

2.4.1 Policy measures

It is general Government policy not to issue an Australian Government Guarantee on new borrowings. Where these are to be provided, there is a statutory requirement that loan guarantees are not be issued without the authorisation of the Minister for Finance and Administration.

2.4.2 Publications

The *Australian Government Competitive Neutrality Guidelines for Managers* was released in February 2004, to assist in the application of competitive

neutrality principles to the wide range of Australian Government significant business activities. Copies of the guidelines (which contain competitive neutrality information and advice) are available from DOFA or the department's website (www.finance.gov.au).

The AGCNCO released its research paper *Cost Allocation and Pricing* in October 1998. The paper examines these issues in the context of significant business activities which operate within non-GBE Commonwealth authorities or departments, meeting their competitive neutrality obligations. A second paper, *Rate of Return Issues*, was released in February 1999. This paper provides general advice on establishing a commercial rate of return on assets targets, particularly for small government business activities, and those factors the AGCNCO will take into account when rate of return issues arise in a complaint. A third paper, *Competitive Neutrality in Forestry* was released on 22 May 2001. The research paper investigates the application of competitive neutrality principles to state and territory forestry operations and associated log-pricing issues. These publications are available from the AGCNCO or its website (www.pc.gov.au/agcnco).

Table 2.1: Agencies that applied competitive neutrality on a voluntary basis during 2004-05 (latest data)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligation
Australian Electoral Committee	Conduct of local government elections	Other	No	Yes	No	GST taken into account, state taxes not applicable	No	n/a	No
Australian Electoral Committee	Conduct of certified agreement/other ballots	Other	No	Yes	No	GST taken into account, state taxes not applicable	No	n/a	No
Bureau of Meterology	Special services unit	BU	No	Yes	Yes	No	No	No	No

n/a Not Applicable
BU Business Unit
Other Other Australian Government Business Activities

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligation
Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)	Publication of books	BU	Yes	No	No	No	n/a	No	No
ASC Pty Ltd		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Australia Post		GBE	Yes	n/a	Yes	Yes	No	No	Yes
Australian Broadcasting Corporation	Retail, facilities hire	BU	Yes	Yes	Yes	Yes	n/a	Yes	No
Australian Federal Police Protective Service	Protective security services; guarding alarm monitoring, vetting	Other	Yes	Yes	Yes	Yes	No	n/a	No
Australian Government Solicitor	Legal and related services	GBE	Yes	n/a	Yes	Yes	n/a	Yes	No
Australian Hearing Services	Hearing related goods and services to eligible clients	Cwth Auth.	Yes	Yes	Yes	Yes	n/a	n/a	Yes

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data) (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligation
Australian Rail Track Corporation Ltd		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Australian Securities and Investment Commission	Printing publications and converting paper documents to electronic format	Cwth Auth.	Yes	Yes	Yes	Yes	n/a	No	No
Australian Strategic Policy Institute	Sale of subscriptions and publications	Cwth Co.	Yes	No	No	No	n/a	n/a	No
Australian Taxation Office	Provision of valuation and other related services	BU	Yes	Yes	Yes	Yes	n/a	n/a	No
Centrelink	Carelink — provision of services in WA	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data) (continued)

Name	Activity	Entity	Assessed subject to CN?	Full cost recovery?	Commercial rate of return?	Tax or tax equivalent payments?	Debt neutrality charge?	Regulatory neutrality allowance?	Delivers community service obligation?
Centrelink	Centrepay — direct deduction facility from customers accounts for payment of electricity, water, rent etc.	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
Centrelink	Rent deduction scheme	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
Centrelink	Family Law Assistance Gateway (FLAG) — call centre on behalf of AGD	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
Centrelink	Smarttraveller call centre — on behalf of DFAT	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
Centrelink	Passports online — on behalf of DFAT	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data) (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligation
Centrelink	Passport call centre — on behalf of DFAT	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
Centrelink	Office of Hearing Services — application processing — on behalf of Office of Hearing Services (DHA)	Cwth Auth.	Yes	Yes	Yes	Yes	No	n/a	No
COMSUPER	Superannuation administration services	Prescribed Agency	Yes	Yes	Yes	Yes	No	n/a	No
CSIRO	Research, technical and consulting services	Other	Yes	Yes	Yes	Yes	No	n/a	No
Defence Housing Authority (DHA)		GBE	Yes	n/a	Yes	Yes	No	n/a	No
Department of Health and Ageing (CRS Australia)	Commercial vocational rehabilitation services	BU	Yes	Yes	No	Yes	n/a	Yes	No

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data) (continued)

Name	Activity	Entity	Assessed subject to CN?	Full cost recovery?	Commercial rate of return?	Tax or tax equivalent payments ?	Debt neutrality charge?	Regulatory neutrality allowance?	Delivers community service obligation?
Department of Finance and Administration (AMG)	Property management	Dept. of State	Yes	Yes	Yes	Yes	No	Yes	No
Department of Industry, Tourism and Resources (AGAL)	Analytical services	Other	Yes	Yes	No	Yes	-	n/a	Yes
Department of Treasury — the Royal Australian Mint	sale of collector coins and other minted products	BU	Yes	Yes	Yes	Yes	n/a	n/a	Yes
Health Service Australia		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
Medibank Private Ltd		GBE	Yes	n/a	Yes	Yes	n/a	n/a	No
National Capital Authority	National Capital exhibition shop	Other	Yes	Yes	Yes	Yes	-	n/a	Yes
Reserve Bank of Australia	Transactional banking services	BU	Yes	Yes	Yes	Yes	n/a	Yes	No
Reserve Bank of Australia	Registry services	BU	Yes	Yes	Yes	Yes	No	n/a	No

Table 2.2: Agencies that applied competitive neutrality during 2004-05 (latest data) (continued)

Name	Activity	Entity	Assessed subject to CN	Full cost recovery	Commercial rate of return	Tax or tax equivalent payments	Debt neutrality charge	Regulatory neutrality allowance	Delivers community service obligation
Special Broadcasting Service	Sale of advertising and sponsorship for television broadcasts	Other	Yes	Yes	No	No	-	No	No
Telstra Corporation		GBE	Yes	n/a	Yes	Yes	No	n/a	Yes

GBE Government Business Enterprise

BU Business Unit

n/a Not applicable

Other Other Australian Government business activities

3 Structural reform of public monopolies

3.1 Australian Government management of the structural reform process

The Competition Principles Agreement (CPA) does not prescribe an agenda for the reform of public monopolies, nor does it require privatisation.

Clause 4 of the CPA does, however, require that before the Australian Government introduces competition into a sector traditionally supplied by a public monopoly, it must remove from the public monopoly any responsibilities for industry regulation. The relocation of these functions is intended to prevent the former monopolist from establishing a regulatory advantage over its existing and potential competitors.

Furthermore, prior to introducing competition into a market traditionally supplied by and/or privatising a public monopoly, the Australian Government must undertake a review into:

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the CPA;
- the merits of any Community Service Obligations (CSO) undertaken by the public monopoly and the best means of funding and delivering any mandated CSOs;
- the price and service regulations to be applied to the industry; and

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

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

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

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

During the reporting period, the Australian Government considered Clause 4 matters in relation to telecommunications, aviation services and wheat marketing arrangements.

3.1.1 Telecommunications industry sector

The telecommunications sector has been open to full competition since 1 July 1997. It is regulated by legislation, predominantly the *Telecommunications Act 1997* and Parts XIB and XIC of the TPA.

The Australian Communications Authority (ACA), an independent statutory authority, is generally responsible for ensuring industry compliance with legislative requirements. The ACCC is responsible for administering the telecommunications competition regime in Parts XIB and XIC of the TPA.

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

The Australian Government's review obligations under Clause 4 were broadly satisfied through a series of related reviews prior to the partial privatisation of Telstra in 1997. The pre-1997 review of telecommunications regulatory arrangements involved extensive public consultation and taking of submissions. The review's issues paper canvassed regulatory arrangements relating to industry structure. In light of the review, the Government adopted the current approach to competition regulation.

In 1997, the ACCC established a telecommunications working group to review Telstra's accounting and cost-allocation arrangements and to assist the development of an enhanced accounting separation model for Telstra businesses. In May 2001 the ACCC released the Telecommunications Industry Regulatory Accounting Framework.

This framework has been enhanced further through the Government's direction to the ACCC to require Telstra to prepare and lodge with the ACCC regulatory accounts and reports, based on historical and current costs. This measure is intended to provide transparency between Telstra's wholesale and retail operations, particularly in relation to the core interconnection services provided over Telstra's network.

The accounting separation regime provides a framework for testing over time whether Telstra is systematically favouring its own retail operations in relation to its competitors. The ACCC has now published a detailed series of accounting separation reports, commencing in December 2003.

The Productivity Commission (the Commission) conducted considered structural reform in the telecommunications sector as part of its Review of NCP Reforms released on 14 April 2005. The Commission expressed the view that the potential benefits of full vertical separation of Telstra's wholesale and retail arms are not sufficiently large to justify the efficiency and transaction costs that this would entail and that it is unclear that requiring Telstra to divest its interests in Foxtel and/or its HFC cable network would deliver a net benefit in an Australian context.

The Commission recommended that the Government should bring forward its scheduled review of telecommunications regulation prior to the sale of Telstra, and that the review's terms of reference should

provide for an assessment of whether further operational separation of Telstra's wholesale and retail arms would yield net benefits.

On 11 April 2005, the Minister for Communications, Information Technology and the Arts released a telecommunications competition regulatory reform issues paper, which, among other things, sought stakeholders' views on operational separation.

3.1.1.1 Competition in provision of Universal Service Obligation services

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

In June 2004, the Government tabled in Parliament a review of the operation of the USO (including costing and funding arrangements) and the Customer Service Guarantee (CSG) (parts 2 and 5 respectively of the *Telecommunications (Consumer protection and Service Standards) Act 1999*). The report identified some problems with the way USO subsidy setting arrangements operated in the past but concluded that overall the USO is meeting its legislative objectives. At this time the Government announced that it did not intend to change the broad legislative framework governing the USO including the current USO costing and funding arrangements.

3.1.2 Federal airports

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

As part of the Federal airports privatisation process, regulatory functions were separated from commercial functions. The airport lessee companies and businesses on the airport sites are subject to all of the applicable state

laws, taxes and charges, except in some specific areas. The areas in which Australian Government laws and regulations apply to the airports are:

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

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

The Slot Management Scheme at Sydney Airport, which guarantees access for regional airlines for services that begin and end in NSW through the ring fence arrangements, was amended in 2001 to provide further guarantees for regional access by expanding the number of regional slots that were permanent (that is, slots that can only be allocated to regional airlines until they are not used by a regional airline for two years). Given the importance of access to Sydney Airport, the Government also amended the Scheme so that regional slots would not be moved out of the peak periods and regional travellers made to fly at less convenient times of the day. In addition, the Government directed the ACCC to monitor landing charges so that the airport could not increase charges on regional airlines by more than the inflation rate as a way of forcing the regional airlines out of Sydney Airport.

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

The airport sale process for Sydney Airport began in early 2001 and binding bids were originally due by 17 September 2001. Following the

terrorist attacks on the United States of America on 11 September 2001 and the subsequent level of disruption in the global financial markets and aviation sectors, the Government deferred the sale until 2002. The Minister for Finance and Administration and the Minister for Transport and Regional Services announced the sale of Sydney Airport on 25 June 2002, and the sale of Bankstown, Camden and Hoxton Park Airports on 15 December 2003. In accordance with the privatisation timetable, the Department of Finance and Administration undertook a Clause 4 review of SACL. The review was completed in June 2002.

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

When Sydney Airport was leased to the Government-owned SACL, it was also subjected to prices notification and monitoring of aeronautical and aeronautical-related charges, respectively. Before privatisation, SACL was a company subject to the Australian Government Business Enterprise accountability guidelines and was required to earn a fair and reasonable return on investment for its owners, the Australian Government. Unlike the privatised airports, the Government did not place a price cap on SACL's aeronautical charges due to significant recent re-development and continued government ownership. In setting out its sale objectives for Sydney Airport, the Government announced that the ACCC would give effect to Government's policy to ensure that price increases in any year for regional carriers' access to Sydney Airport would not exceed the inflation rate, even for peak periods.

In early October 2001, the then Minister for Financial Services and Regulation signed new instruments in relation to the existing regime for price oversight at Federal airports. The revised regime retained price

caps in Brisbane, Melbourne and Perth airports but allowed for an once-only price increase up to specified amounts. This was to allow the airport lessees to better manage the major structural adjustments taking place in the domestic aviation market. Formal monitoring of the prices, costs and profits related to the supply of aeronautical-related services was retained for Adelaide, Brisbane, Canberra, Darwin, Melbourne, Perth and Sydney airports.

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

The Government accepted the recommendation that Sydney, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports be subject to price-monitoring for five years, to take effect from 1 July 2002. Toward the end of the 5-year period an independent review is to be carried out to ascertain the need for future airport price regulation. With this decision, the privatised Federal airports still remain subject to the general operation of the TPA, as well as the *Airports Act 1996* (the Act). The economic regulatory aspects of the Act are addressed under Parts 7 (which requires financial accounts and reports to be prepared by the privatised Federal airports) and 8 (Quality of Service monitoring).

The Productivity Commission's Report recommended that the Quality of Service (QoS) monitoring should continue at all federal airports subject to price-monitoring. The Australian Government's response to the report agreed that QoS monitoring is a useful adjunct to price-monitoring, but

advised that the continued relevance of Parts 7 and 8 would be considered as part of a broader review of the Act.

The Government is currently undertaking a review of the *Airports Act 1996*. Price, and quality-monitoring, under Parts 7 and 8 will assist the Australian Government with the independent review of the current price regulation to be held towards the end of a five-year probationary period (due in 2007) which will determine what form of prices oversight should apply in the future. Information collected and reported pursuant to Parts 7 and 8 of the *Airports Act* may contribute to the Government's consideration of the current 'light-handed' regime of price regulation of airport services.

3.1.2.1 Access arrangements for significant infrastructure facilities

Section 192 of the *Airports Act 1996* created an airport-specific access regime as part of the economic regulatory regime for the larger privatised federal airports. These arrangements provided for the declaration of airport services under Part IIIA of the TPA 12 months after private sector companies began operating the airports, except to the extent to which each airport service is the subject of an access undertaking in operation under Part IIIA. Airport services are defined by the *Airports Act* as services provided by means of significant facilities at the airport necessary for the purposes of operating and/or maintaining civil aviation services at the airport.

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

3.1.3 Former Australian Wheat Board

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

The former Wheat Board's export control powers were transferred to an independent statutory Wheat Export Authority (WEA) in order to separate the commercial wheat marketing operations (AWBI, a subsidiary of AWB Ltd), from the regulatory aspects associated with the export wheat single desk arrangements. AWBI has been given an automatic right to export wheat through the legislation. The WEA's functions include issuing export consents to persons other than AWBI and monitoring and reporting on AWBI's performance in relation to the export of wheat and the resultant benefits to growers.

The *Wheat Marketing Act 1989* (the Act), the legislation governing these arrangements, was reviewed in 2000 under NCP. The terms of reference for the review required an examination of relevant matters in Clause 4 of the CPA regarding structural reform of public monopolies. The Government's response to the review was that there would be no legislative or significant structural change to the then wheat single desk arrangements.

Following an inquiry and report by the Senate Rural and Regional Affairs and Transport Legislation Committee on the Wheat Marketing Amendment Bill 2002, the Act was amended in July 2003. Amongst other matters, changes were made to the scheduled 2004 review process so that the review would be conducted by an independent panel appointed by the minister and that the WEA would itself be reviewed.

The 2004 review was conducted by an independent panel. The review assessed AWBI's performance as the commercial manager of the single desk and the effectiveness of the WEA as its regulator, as well as the operation of the export consent arrangements. The review assessed whether benefits to growers resulted from the performance of AWBI in relation to the export of wheat. The terms of reference for the 2004 review did not address whether or not the single desk should continue and the review was not intended to fulfil NCP requirements.

The review provided a report to the Minister in September 2004 and a report for growers in October 2004, the latter of which was tabled in Parliament. The panel found that both AWBI and the WEA had performed well. The panel supported the current framework that establishes the wheat export arrangements but recommended a number of improvements to the governance and management of the single desk

by AWBI, the operation of the WEA, and the export consent system, which it considered would benefit growers and the wider community.

The Government responded to the review on 5 April 2005. It has given in-principle support to all of the review recommendations, recognising that responsibility for the implementation rests largely with AWBI, the WEA and in some cases AWB Ltd shareholders. The Government will require both AWBI and the WEA to report to it and the Grains Council of Australia (on behalf of industry) in June and December 2005 on the implementation of the recommendations.

4 Access to essential infrastructure

4.1 The importance of access to infrastructure

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

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

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

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

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

4.2 Part IIIA of the *Trade Practices Act 1974*

Clause 6 of the CPA requires the Australian Government to establish a legislative regime for third party access to services provided by means of significant infrastructure facilities where:

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

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

To give effect to this commitment, Part IIIA was inserted into the TPA. This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Australian Government in determining actual terms and conditions of access.

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

- declaration of a service provided by an infrastructure facility:
 - a person can apply through the NCC to have a service provided by a significant infrastructure facility ‘declared’ by decision of the relevant minister. Where a service is declared, access to the service may be negotiated on a commercial basis between the service provider and an access seeker.
 - if agreement cannot be reached, the terms and conditions of access can be determined by the ACCC through a legally binding arbitration process. In making an access determination, the ACCC must take into account a range of factors, including the legitimate

business interests of the service provider, the provider's investment in the facility and the public interest.

- a minister's decision on an application for declaration and an ACCC determination on a post-declaration arbitration can be reviewed by the Australian Competition Tribunal (ACT) upon application within 21 days.
- through an undertaking to the ACCC:
 - the operator of an infrastructure service can give a voluntary undertaking to the ACCC, setting out the terms and conditions on which access to that service will be provided. If an undertaking is accepted, this provides a legally binding means by which third parties can obtain access to the infrastructure service. A service that is subject to an undertaking cannot be declared as described above; and
- certification of a state or territory access regime as an 'effective regime':
 - State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Australian Government minister on whether or not to certify the regime as effective. On receiving a recommendation from the NCC, the Minister must decide whether the access regime is an effective regime by applying relevant principles under the CPA.
 - where an effective state or territory access regime is in place the relevant infrastructure service cannot be declared under Part IIIA.
 - a decision on an application for certification can be reviewed by the ACT upon application within 21 days of publication of the minister's decision.

Specific access regimes have also been established for particular infrastructure facilities. Apart from the sector-specific telecommunications access regime, the access regimes for airport services provided at core regulated Australian Government airports and for

natural gas transmission and distribution pipelines, interact with the national access regime.

The Productivity Commission conducted a legislation review of Part IIIA of the TPA. The Government tabled the report on 17 September 2002. The Government released its final response to the report on 20 February 2004. See Chapter 1, page 41 for additional details.

4.3 Australian Government activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Australian Government jurisdiction or requiring a decision by an Australian Government minister during the period 1 July 2004 to 30 June 2005.

4.3.1 Application for declaration of airside services at Sydney Airport

In October 2001 the NCC received an application from Virgin Blue Airlines for declaration of airside services at Sydney Airport. On 29 January 2004, the Parliamentary Secretary to the Treasurer accepted a recommendation from the NCC and decided not to declare the services. In deciding not to declare airside services, the Parliamentary Secretary to the Treasurer agreed with the NCC's assessment that it was not satisfied that declaration of airside services would promote competition in the market for domestic passenger services in Australia.

Virgin Blue applied to the ACT for a review of the decision, the matter was heard in October 2004. As at 30 June 2005, the ACT had not yet released its decision.

4.3.2 Application for declaration of rail track services in the Pilbara

On 15 June 2004, the NCC received an application from Fortescue Metals Group Ltd (FMG) for declaration of a service provided using parts of the Mount Newman and Goldsworthy railway lines in the Pilbara, Western Australia. BHP Billiton Iron Ore (BHP) owns both railway lines.

The NCC has released decisions on two preliminary issues in relation to the FMG application, concluding that the two railway lines each provide a separate service, and that the Mount Newman line service is capable of being considered further for declaration. However, the Goldsworthy line service was considered to be part of a production process and therefore exempt from declaration.

Following these decisions, BHP applied to the Federal Court for a declaration that the use of the Mount Newman railway line is not a service for which declaration can be sought. An order prohibiting the NCC from further considering FMG's application was also sought.

FMG has applied to the Federal Court for a declaration that the use of the Goldsworthy railway line is a service for which declaration can be sought. FMG has also sought an order requiring the NCC to consider the application for declaration of the service.

The BHP and FMG proceedings are continuing. The NCC has commenced consideration of the application for declaration of the Mount Newman railway line only.

5 Government Business Enterprises — prices oversight

5.1 The purpose of prices oversight

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

The Australian Government has had its current prices oversight arrangements for public and private sector business activities under Australian Government jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. National Competition Policy (NCP) aims to fill this void by encouraging the establishment of independent state and territory prices oversight bodies.

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

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

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

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

5.2 Australian Government prices oversight

The Australian Government has a range of existing prices surveillance and monitoring arrangements. Their objective is to promote competitive pricing, and restrain price rises in those markets where competition is less than effective. They apply across both the private and public sector, subject to Constitutional limitations.

The ACCC, an independent Australian Government authority, is responsible for prices oversight.

Following recommendations from the Productivity Commission review into the *Prices Surveillance Act 1983* (PSA) completed in August 2001, prices surveillance provisions were moved from the PSA into Part VIIA of the TPA following passage of Schedule 2 of the Trade Practices Legislation Amendment Bill 2003. The amendments preserve prices surveillance powers but enable bodies other than the ACCC to conduct a price inquiry.

The TPA, and previously the PSA, enables the ACCC to undertake prices surveillance, price inquires or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Australian Government, state and territory authorities, as well as trading, financial and foreign corporations and people or firms within the Australian Capital Territory and across state and territory boundaries.

Once the responsible Australian Government minister formally declares an organisation, good or service subject to prices surveillance, the price of a declared product is not permitted to increase above its endorsed price or its highest price in the previous 12 months without notification to the ACCC.

Prices surveillance for Australian Government entities was applied to aeronautical services for regional airlines at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route

navigation and rescue and fire fighting services and services reserved to Australia Post.

Price inquiries involve studies of limited duration into pricing practices and related matters concerning the supply of particular goods and services, following direction from the responsible Australian Government Minister. During the period of the inquiry, the price under examination may not increase beyond its peak price in the previous 12 months without the approval of the ACCC. The findings of the inquiry are then reported to the responsible minister.

The responsible Australian Government minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, the ACCC was required to undertake prices monitoring of aeronautically related charges at Australia's seven major airports, and collect price, cost and profit data for container terminal operator companies in Australia's major ports. The findings are also reported to the minister.

5.2.1 Matters referred to the ACCC

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

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

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

and that the pricing of the GBE has a significant direct or indirect impact on constitutional trade or commerce;

- the NCC has then recommended that the responsible Australian Government Minister declare the GBE for prices surveillance by the ACCC; and
- the responsible Australian Government Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements during the period 1 July 2004 to 30 June 2005.

6 Conduct Code Agreement

6.1 Competitive conduct rules

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

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

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

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

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

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

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

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

The exemption provisions in sections 51(2) and 51(3) were subject to a legislation review under the CPA (see page 57).

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

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

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

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

6.2.1 Existing legislation reliant on section 51(1)

The following legislation containing exception provisions has been previously identified:

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

- *Wheat Marketing Act 1989* (section 57(6)); and
- *Year 2000 Information Disclosure Act 1999* (section 17).

6.2.2 New legislation — exceptions made in 2004-05

There were no notifications of Commonwealth legislation made in reliance on section 51(1) in the period of 1 July 2004 to 30 June 2005.

7 Council of Australian Governments related reforms (electricity, gas, road transport)

The major infrastructure areas of electricity, gas and road transport are subject to reform requirements set out in separate inter-governmental agreements endorsed by Council of Australian Governments (COAG). Satisfactory progress in achieving the COAG reforms that were placed under the umbrella of NCP in 1995 is a condition for receipt of competition payments, as outlined in the *Agreement to Implement the National Competition Policy and Related Reforms*.

In accordance with the Intergovernmental Agreement on a National Water Initiative, the 2005 assessment of jurisdictions' compliance with water commitments is to be conducted by the National Water Commission.

While these commitments are largely the responsibility of the States and Territories, the Australian Government does have some specific responsibilities (particularly in the area of gas reform). The Australian Government also seeks to assist the States and Territories in meeting their obligations.

The following sections outline reform progress in each of the targeted areas, with emphasis on the role of the Australian Government.

7.1 COAG consideration of energy market reform

During 2004, the Ministerial Council on Energy (MCE) progressed implementation of the Energy Market Reform Program as outlined in their 11 December 2003 report to the COAG on the Reform of Energy Markets. Key achievements to date include:

- The COAG Australian Energy Market Agreement, setting out the new governance and legislative structure for an Australian energy market, was endorsed by all Premiers and the Prime Minister on 30 June 2004.

- Legislation establishing a new Australian Energy Regulator (AER), with responsibility for market surveillance and energy market regulation, was passed by Parliament on 25 June 2004.
- Legislation establishing a new AEMC, with responsibility for rule-making and energy market development, was passed by the South Australian Parliament on 1 July 2004 and proclaimed on 22 July 2004.
- The National Electricity Law Amendments Bill which will give powers and functions to the Australian Energy Market Commission (AEMC) and AER was passed by the South Australian Upper House on 14 April 2005.

7.1.1 Governance and institutions

- The AER and the AEMC will commence operations when the National Electricity (South Australia) (New National Electricity Law) Amendment Bill is proclaimed.
- The National Electricity Code Administrator will be wound up following the operational commencement of the AER and AEMC.

7.1.2 Economic regulation

- Industry consultation was undertaken on the development of a national framework for distribution and retail regulation and will inform MCE officials in the preparation of an options paper.

7.1.3 User participation

- The MCE User Participation Policy Statement was released on 30 August 2004, covering the future work programme for consumer advocacy; market mechanisms to promote demand side response in the NEM; the role of interval metering technology; and demonstration, information and capacity building.
- Consultation forums to assist in the development of options for a future, workable national advocacy model were held during

November 2004. Further consultation on the options was undertaken during April 2005.

7.2 Electricity

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

The NEM commenced on 13 December 1998 and has operated effectively with only minor operational problems. Market participants have been generally pleased with the market arrangements.

7.2.1 Network development

Transmission projects advanced during the period 1 July 2004 to 31 March 2005 included:

- The Basslink Project (a 480 MW non-regulated line between Tasmania and Victoria); and
- The planned South Australia/New South Wales interconnector (SNI) (a 240 MW regulated line between New South Wales and South Australia proposed by TransGrid) was subject to the appeal of Victorian Supreme Court decision of 24 July 2003 in favour of TransEnergie. The appeal was expected to be heard in the second half of 2004 until TransGrid withdrew its application license fee.

7.2.2 Retail contestability

The Queensland Government has delayed the introduction of Full retail contestability (FRC) for electricity.

7.2.3 Electricity transmission

- As part of the new national planning regime for transmission, the first annual national transmission statement was released on 30 July 2004.
- A consultation paper on the NEM — Regional Structure Review and the draft report on NEM Transmission Region Boundary Structure were released for consultation in October 2004
- Considerable work was undertaken in response to the load shedding event of 13 August 2004 to improve response to significant system disturbances and the equity of automatic load shedding between regions. A review of under frequency load shedding settings is currently underway.

7.3 Gas

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

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

Governments and industry are required to:

- remove policy and regulatory impediments to retail competition in the natural gas sector;
- remove a number of restrictions on interstate trade; and
- develop a nationally integrated competitive natural gas market by:

- establishing a national regulatory framework for third party access to natural gas pipelines; and
- facilitating the inter-connection of pipeline systems.

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

In November 1997, the Australian Government, States and Territories agreed to enact legislation to apply a uniform national framework for third party access to all gas pipelines. This framework included the Gas Pipelines Access Law and the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code).

To realise the benefits of third party access in the natural gas retail market, a degree of separation between the monopoly pipeline transportation business and other potentially contestable businesses is required. The access regime includes 'ring fencing' provisions that require the monopoly transportation business to be separated from the retail business of the company, including separate accounts, staff and customer information.

The following activities have taken place over the period 1 July 2004 to 31 March 2005.

7.3.1 Gas market development

- MCE agreed to Principles for Gas Market Development in December 2004, following consideration of draft principles released for public consultation.
- MCE issued a statement on Upstream Gas Issues in December 2004 endorsing the findings of the Ministerial Council on Mineral and Petroleum Resources (MCMPR) on recommendations in the COAG Energy Market Review (Parer Report).
- The MCE's Expanded Gas Program integrates gas market development (wholesale) with the response to the Productivity

Commission review of the Gas Access Regime to improve the investment and regulatory environment.

- Legislation is currently being drafted to bring the gas sector under the new governance and institutional arrangements by June 2005.

7.3.2 Retail Contestability

- FRC has commenced in New South Wales, Victoria, South Australia and the Australian Capital Territory. Queensland has delayed the introduction of FRC for gas.

7.3.3 National Gas Emergency Response Protocol

- MCE Ministers signed a Memorandum of Understanding in December 2004, whereby agreeing that the affected jurisdictions, in a gas supply shortage, are to consult over the use of emergency powers. The protocol is being further developed.

7.3.4 Review of Gas Access Regime

On 29 November 2002, the MCE agreed to proceed with a review of the Gas Access Regime. The Regime consists of the Natural Gas Pipelines Access Agreement, Gas Pipelines Access Law and the National Gas Code.

The Productivity Commission (the Commission) launched the review on 13 June 2003. The Commission presented its final report to Government in June 2004.

The primary aim of the review was to examine the extent to which current gas access arrangements balance the interests of relevant parties, provide a relevant framework that enables efficient investment in new pipeline and network infrastructure and which can assist in facilitating a competitive market for natural gas.

The Commission was asked to take into account in its deliberations the government response to the Commission's Review of the National Access Regime, the National Energy Policy Framework agreed by COAG

in June 2001, and the outcomes arising from the COAG Independent Review of Energy Market Directions.

The MCE will develop a response to the report.

7.3.5 Code changes

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

When considering a Code change, NGPAC prepares an information memorandum and undertakes public consultation for significant proposed changes to the Code. NGPAC considers the submissions received before making recommendations to the Ministers. There were no Code changes in 2004-05.

The MCE has agreed that the functions of the NGPAC and Gas Code Registrar will transfer to the AEMC in mid-2005 following consideration of the outcomes of the review of the Gas Access Regime.

7.4 Road transport

The NRTC was established in 1991 to oversee development and implementation of the road transport reform programme under the direction of a Ministerial Council.

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

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

- uniform heavy vehicle charges;

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

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

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

Throughout 1999-2000 a working group, the Standing Committee on Transport, developed a framework for assessment, including consulting industry. The ATC and COAG agreed on the framework and it was provided to the NCC to serve as the basis for its June 2001 third tranche assessment of road transport reforms. Six reforms were included in this assessment framework. Only one of these reforms, a second-generation of Heavy Vehicle Charges, was relevant to the Australian Government, and it was implemented on 1 July 2001.

Of the 19 reforms in the second tranche assessment framework, the Australian Government was required to implement nine in relation to heavy vehicles registered in the Federal Interstate Registration Scheme (FIRS). Most of these were implemented previously. However, some aspects of one reform relating to heavy vehicle registration were delayed pending the broader review of the FIRS.

The Australian Government Solicitor's review of FIRS has now been concluded. On 12 April 2005 the department advised Minister Anderson of the recommendations of this review. The department is currently

waiting for the minister's decision on the future direction of FIRS. This decisions will determine the need or otherwise to undertake the reform activity in question. Once a decision has been made the department will appropriately address this reform issue.

Appendix A

Commonwealth Legislation Review Schedule (as at 30 June 2005) — by scheduled commencement date

Table A1: Commonwealth Legislation Review Schedule

Name of legislation	Responsible department
Underway in 1996	
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	Environment and Heritage
<i>Bounty (Books) Act 1986</i>	Industry, Tourism and Resources
<i>Bounty (Fuel Ethanol) Act 1994</i>	Industry, Tourism and Resources
<i>Bounty (Machine Tools & Robots) Act 1985</i>	Industry, Tourism and Resources
<i>Census & Statistics Act 1905</i>	Treasury
<i>Commerce (Imports) Regulations, Customs Prohibited Imports Regulations and Commerce (Trade Descriptions) Act 1905</i>	Attorney-General's
<i>Corporations Act 1989</i>	Treasury
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991</i>	Education, Science and Training
Financial system — comprehensive review of the regulatory framework	Treasury
<i>Industrial Relations Act 1988</i>	Employment and Workplace Relations
<i>Patents Act 1990</i> , sections 198-202 (Patent Attorney registration)	Industry, Tourism and Resources
<i>Protection of Movable Cultural Heritage Act 1986</i>	Communications, Information Technology and the Arts
<i>Quarantine Act 1908</i>	Agriculture, Fisheries and Forestry

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Immigration and Multicultural and Indigenous Affairs
<i>Australian Maritime Safety Authority Act 1990</i>	Transport and Regional Services
<i>Australian Postal Corporation Act 1989</i>	Communications, Information Technology and the Arts
<i>Bills of Exchange Act 1909</i>	Treasury
<i>Customs Tariff Act 1995 — Automotive Industry Arrangements</i>	Industry, Tourism and Resources
<i>Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements</i>	Industry, Tourism and Resources
<i>Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — Customs Tariff Act 1995, Schedule 4, Item 21, Treatment Code 421</i>	Attorney-General's
<i>Foreign Investment Policy, including associated regulation</i>	Treasury
<i>Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976</i>	Agriculture, Fisheries and Forestry
<i>International Arbitration Act 1974</i>	Attorney-General's
<i>Migration Act 1958 — sub-classes 120 and 121 (business visas)</i>	Immigration and Multicultural and Indigenous Affairs
<i>Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)</i>	Immigration and Multicultural and Indigenous Affairs
<i>Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations</i>	Immigration and Multicultural and Indigenous Affairs
<i>Migration Agents Registration (Application) Levy Act 1992 and Migration Agents Registration (Renewal) Levy Act 1992</i>	Immigration and Multicultural and Indigenous Affairs
<i>National Road Transport Commission Act 1991 and related Acts</i>	Transport and Regional Services
<i>Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and regulations</i>	Foreign Affairs and Trade
<i>Pooled Development Funds Act 1992</i>	Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
<i>Quarantine Act 1908</i> , in relation to human quarantine	Health and Ageing
<i>Radiocommunications Act 1992</i> and related Acts	Communications, Information Technology and the Arts
<i>Rural Adjustment Act 1992</i> and States and Northern Territory Grants (Rural Adjustment) Acts	Agriculture, Fisheries and Forestry
<i>Shipping Registration Act 1981</i>	Transport and Regional Services
Trade Practices (Consumer Product Information Standards) (Care for clothing and other textile products labelling) Regulations	Treasury
<i>Tradesmen's Rights Regulation Act 1946</i>	Employment and Workplace Relations
1997-98	
<i>Affirmative Action (Equal Employment Opportunity for Women) Act 1986</i>	Employment and Workplace Relations
<i>Agricultural and Veterinary Chemicals Act 1994</i>	Agriculture, Fisheries and Forestry
<i>Bankruptcy Act 1966</i> and Bankruptcy Rules — trustee registration provisions	Attorney-General's
<i>Customs Act 1901</i> Sections 154-161L	Attorney-General's
<i>Defence Housing Authority Act 1987</i>	Defence
<i>Environmental Protection (Nuclear Codes) Act 1978</i>	Health and Ageing
<i>Higher Education Funding Act 1988</i> plus include: Vocational Education & Training Funding Act 1992 and any other regulation with similar effects to the <i>Higher Education Funding Act 1988</i>	Education, Science and Training
<i>Imported Food Control Act 1992</i> and regulations	Agriculture, Fisheries and Forestry
<i>International Air Services Commission Act 1992</i> and International Air Service Agreements	Transport and Regional Services
<i>Motor Vehicle Standards Act 1989</i>	Transport and Regional Services
<i>Mutual Recognition Act 1992</i>	Education, Science and Training and Prime Minister and Cabinet
<i>National Health Act 1953</i> (Part 6 & Schedule 1) and <i>Health Insurance Act 1973</i> (Part 3)	Health and Ageing

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1997-98	
<i>National Residue Survey Administration Act 1992 and related Acts</i>	Agriculture, Fisheries and Forestry
<i>Petroleum Retail Marketing Franchise Act 1980</i>	Industry, Tourism and Resources
<i>Petroleum Retail Marketing Sites Act 1980</i>	Industry, Tourism and Resources
<i>Pig Industry Act 1986 and related Acts</i>	Agriculture, Fisheries and Forestry
Primary Industries Levies Acts and related Collection Acts	Agriculture, Fisheries and Forestry
<i>Torres Strait Fisheries Act 1984 and related Acts</i>	Agriculture, Fisheries and Forestry
Trade Practices (Consumer Product Information Standards) (Cosmetics) Regulations	Treasury
<i>Trade Practices Act 1974 (s 51(2) and s 51(3) exemption provisions)</i>	Treasury
1998-99	
<i>Anti-dumping legislation, Customs Act 1901 Pt XVB and Customs Tariff (Anti-dumping) Act 1975</i>	Attorney-General's
<i>Australia New Zealand Food Authority Act 1991 Food Standards Code</i>	Health and Ageing
<i>Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964</i>	Communications, Information Technology and the Arts
<i>Defence Force (Home Loans Assistance) Act 1990</i>	Defence
<i>Export Control Act 1982 (fish, grains, dairy, processed foods etc)</i>	Agriculture, Fisheries and Forestry
<i>Financial Transactions Reports Act 1988 and regulations</i>	Attorney-General's
Fisheries Legislation	Agriculture, Fisheries and Forestry
<i>Health Insurance Act 1973 — Part IIA</i>	Health and Ageing
<i>Intellectual property protection legislation (Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968 and possibly the Circuit Layouts Act 1989)</i>	Attorney-General's and Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1998-99	
<i>Land Acquisition Acts: a) Land Acquisition Act 1989 and regulations; b) Land Acquisitions (Defence) Act 1968; c) Land Acquisition (Northern Territory Pastoral Leases) Act 1981</i>	Finance and Administration
<i>Marine Insurance Act 1909</i>	Attorney-General's
<i>Navigation Act 1912</i>	Transport and Regional Services
<i>Proceeds of Crime Act 1987</i> and regulations	Attorney-General's
Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts
<i>Trade Practices Act 1974</i> — Part X (shipping lines)	Transport and Regional Services
<i>Veterans' Entitlement Act 1986</i> — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)	Veterans' Affairs
1999-00	
Dairy Industry Legislation	Agriculture, Fisheries and Forestry
<i>Defence Act 1903</i> (Army and Airforce Canteen Services Regulations)	Defence
<i>Disability Discrimination Act 1992</i>	Attorney-General's
Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
<i>Export Control Act 1982</i> — Export Control (Unprocessed Wood) Regulations	Agriculture, Fisheries and Forestry
<i>Export Finance & Insurance Corporation Act 1991</i> and <i>Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991</i>	Foreign Affairs and Trade
<i>Hazardous Waste (Regulation of Exports and Imports) Act 1989</i> , <i>Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995</i> and related regulations	Environment and Heritage
<i>Insurance (Agents & Brokers) Act 1984</i>	Treasury
<i>Native Title Act 1993</i> and regulations	Prime Minister and Cabinet
<i>Ozone Protection Act 1989</i> and <i>Ozone Protection (Amendment) Act 1995</i>	Environment and Heritage
<i>Petroleum (Submerged Lands) Act 1967</i>	Industry, Tourism and Resources

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1999-00	
<i>Prices Surveillance Act 1983</i>	Treasury
<i>Superannuation Acts including: Superannuation (Self Managed Superannuation Funds) Taxation Act 1987, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991, Superannuation (Resolution of Complaints) Act 1993, Superannuation Industry (Supervision) Act 1993, Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993</i>	Treasury
<i>Trade Practices Act 1994</i> (including exemptions) — Part IIIA (access regime)	Treasury
<i>Trade Practices Act 1974</i> — 2D exemptions (local government activities)	Treasury
<i>Trade Practices Act 1974</i> — fees charged	Treasury
<i>Wheat Marketing Act 1989</i>	Agriculture, Fisheries and Forestry

Appendix A

Commonwealth Legislation Review Schedule (as at 30 June 2005) — by scheduled commencement date

Table A1: Commonwealth Legislation Review Schedule

Name of legislation	Responsible department
Underway in 1996	
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	Environment and Heritage
<i>Bounty (Books) Act 1986</i>	Industry, Tourism and Resources
<i>Bounty (Fuel Ethanol) Act 1994</i>	Industry, Tourism and Resources
<i>Bounty (Machine Tools & Robots) Act 1985</i>	Industry, Tourism and Resources
<i>Census & Statistics Act 1905</i>	Treasury
<i>Commerce (Imports) Regulations, Customs Prohibited Imports Regulations and Commerce (Trade Descriptions) Act 1905</i>	Attorney-General's
<i>Corporations Act 1989</i>	Treasury
<i>Education Services for Overseas Students (Registration of Providers and Financial Regulation) Act 1991</i>	Education, Science and Training
Financial system — comprehensive review of the regulatory framework	Treasury
<i>Industrial Relations Act 1988</i>	Employment and Workplace Relations
<i>Patents Act 1990</i> , sections 198-202 (Patent Attorney registration)	Industry, Tourism and Resources
<i>Protection of Movable Cultural Heritage Act 1986</i>	Communications, Information Technology and the Arts
<i>Quarantine Act 1908</i>	Agriculture, Fisheries and Forestry

Table A1: Commonwealth legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
<i>Aboriginal Land Rights (Northern Territory) Act 1976</i>	Immigration and Multicultural and Indigenous Affairs
<i>Australian Maritime Safety Authority Act 1990</i>	Transport and Regional Services
<i>Australian Postal Corporation Act 1989</i>	Communications, Information Technology and the Arts
<i>Bills of Exchange Act 1909</i>	Treasury
<i>Customs Tariff Act 1995 — Automotive Industry Arrangements</i>	Industry, Tourism and Resources
<i>Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements</i>	Industry, Tourism and Resources
<i>Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — Customs Tariff Act 1995, Schedule 4, Item 21, Treatment Code 421</i>	Attorney-General's
<i>Foreign Investment Policy, including associated regulation</i>	Treasury
<i>Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976</i>	Agriculture, Fisheries and Forestry
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<i>Australia New Zealand Food Authority Act 1991 Food Standards Code</i>	Health and Ageing
<i>Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964 and Television Licence Fees Act 1964</i>	Communications, Information Technology and the Arts
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<i>Navigation Act 1912</i>	Transport and Regional Services
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Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
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<i>Native Title Act 1993</i> and regulations	Prime Minister and Cabinet
<i>Ozone Protection Act 1989</i> and <i>Ozone Protection (Amendment) Act 1995</i>	Environment and Heritage
<i>Petroleum (Submerged Lands) Act 1967</i>	Industry, Tourism and Resources

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<i>Superannuation Acts including: Superannuation (Self Managed Superannuation Funds) Taxation Act 1987, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991, Superannuation (Resolution of Complaints) Act 1993, Superannuation Industry (Supervision) Act 1993, Occupational Superannuation Standards Regulations Applications Act 1992, Superannuation (Financial Assistance Funding) Levy Act 1993</i>	Treasury
<i>Trade Practices Act 1994</i> (including exemptions) — Part IIIA (access regime)	Treasury
<i>Trade Practices Act 1974</i> — 2D exemptions (local government activities)	Treasury
<i>Trade Practices Act 1974</i> — fees charged	Treasury
<i>Wheat Marketing Act 1989</i>	Agriculture, Fisheries and Forestry