Commonwealth National Competition Policy

Annual Report

1999-2000

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Introduction

The significance of Competition Policy for Australia

Continuing improvement in the living standards of Australians is dependent on the productivity performance of the economy. Increasing national productivity will, over the long term, boost economic growth, employment opportunities, export competitiveness and real household income. This, in turn, will influence our capacity as a society to provide essential services to the community.

The Productivity Commission (PC) has estimated that National Competition Policy (NCP) reforms could potentially result in a 2.5 per cent increase in Gross Domestic Product (GDP) above what would otherwise occur in the absence of these reforms. Also, lower domestic production costs arising from NCP reforms enhance the competitiveness of exporters, with the PC estimating export levels being 3.4 per cent above what would otherwise occur in the absence of reforms.[1]

Clear evidence exists of improving productivity growth rates in Australia, with growth rates improving across all measures of productivity (labour, capital and multifactor) in the 1990s, and particularly in the second half of the 1990s.[2]

General sources of productivity gains are the development and adoption of new technology and innovations, better organisation of production within firms, more efficient allocation of resources across industries and improvement of international competitiveness.

The freeing up of resources as a result of productivity improvements provides scope for their investment in more efficient uses, creating employment opportunities.

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

2 Commonwealth of Australia, *Budget Strategy and Outlook 2001-02*, Budget Paper No. 1, AusInfo, Canberra, pp.4-15.

To ensure continued increases in the level of productivity growth, an ongoing commitment to reducing structural rigidities and developing and maintaining competitive markets is required. The PC has indicated that a significant contributory factor has been the sustained microeconomic reform over the last two decades.

Ultimately, a competitive economy provides both the flexibility and incentives to adjust in a more rapid and less costly manner to changes in the domestic and international environment. This includes any structural changes.

Structural change refers to changes in the size and composition of an economy in terms of the distribution of activities and resources among firms, industries and regions. This may be the result of technological advances, changes in domestic and international consumption patterns and trade or changes in the provision of infrastructure or labour market services. These factors will have different impacts on different sectors of the community and regions, and over time.

It is important that the economy can effectively adjust to these changes. This requires flexible economic structures capable of taking advantage of emerging opportunities by facilitating the movement of resources (product, labour and capital) between and within industries. Competition reforms assist this process.

Effective competition in markets for goods and services provides the main impetus for firms to seek productivity improvements, and ensure that a greater proportion of these gains are distributed in the form of lower product prices rather than retained by firms as higher profits. This reduces operating costs and prices to business and consumers. It also encourages a wider range and improved quality of goods and services.

A PC research paper found that much of the productivity growth in high performing industries has been passed on in the form of lower prices. This is particularly true in the 1990s, suggesting that increased competitive pressures have been at work and have limited the scope for wage and profit growth differentials to emerge across industries.[3]

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3 Parham, D., Barnes, P., Roberts, P. and Kennett, S. 2000, *Distribution of the Economic Gains of the 1990s*, Productivity Commission Staff Research Paper, AusInfo, Canberra, pp. XIII-XIV.

In seeking productivity gains, competition also provides a spur to innovation in product design, production processes and management practices. The manner in which resources are managed within the workplace, the rate of adoption of innovation and the development of associated skills play an important role in productivity growth.

Competition policy is a critical component of the broader structural reform agenda. It involves continuing efforts to reduce barriers to market entry and exit, reform of anti-competitive regulations and expose government owned businesses to competitive market forces in a competitively neutral manner.

Competition reform also offers a further means to reduce market transaction costs — principally through a comprehensive program of regulatory reform — and increase the information available to consumers to make informed choices.

National Competition Policy framework

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

The commitments embodied in these agreements effectively underpin National Competition Policy (NCP) in Australia.[4] 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* and the *Prices Surveillance Act 1983*.

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

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4 The 1995 Agreements also resulted in the establishment of the National Competition Council (NCC), an inter-jurisdictional body funded by the Commonwealth. The NCC has statutory responsibilities under the Commonwealth *Trade Practices Act 1974* and *Prices Surveillance Act 1983*, as well as specified roles under the Agreements aimed at ensuring the effective introduction of NCP.

- the review and, where necessary, reform of legislation that is anti-competitive, with the requirement that where such legislation is to be retained or introduced it must be demonstrably in the community interest (Chapter 1);

- the implementation of competitive neutrality for all government business activities operating in a contestable market, which requires that such businesses not benefit commercially simply by virtue of their public ownership. For example, they should be liable for the same taxes and charges, rate of return and dividend requirements as their private sector competitors (Chapter 2);

- the structural reform of public monopolies, where their markets are to be opened to competition or they are to be privatised, to ensure they have no residual advantages over potential competitors (Chapter 3);

- the provision of access arrangements to services provided by significant infrastructure facilities (such as electricity grids, airports and communications networks) that would be uneconomic to duplicate, to encourage competition in upstream and downstream markets and reduced prices for related products (Chapter 4);

- independent oversight by State and Territory governments of the pricing policies of government business enterprises, to ensure that price rises are not excessive (the Commonwealth already has prices oversight provisions) (Chapter 5);

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

- ensuring commitment to related reforms in the key infrastructure areas of electricity, gas, water and road transport with a view to improving efficiency, implementing nationwide markets and standards, and protecting the environment (Chapter 7).

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

NCP reforms have contributed to reductions in costs and prices across most infrastructure services that have been subject to reform. These include electricity, gas, rail, ports and telecommunications.

For example, the PC has estimated that in the period 1994 to 1998 there has been a 22 per cent reduction in gas prices for industrial and residential customers; between 1989-90 and 1997-98 national rail freight rates (in real terms) fell 18 per cent and port authority charges fell by 23 per cent. Further, stevedoring charges fell 15 per cent between 1995 and 2000. In telecommunications, the introduction of full competition in 1997, has reduced prices and improved choice for consumers and business, with consumers international call prices falling by over 80 per cent in some cases and national long distance calls by up to 40 per cent.

However, it is important to recognise that this is a long-term process. Ongoing commitment by all levels of government to effective reform will be necessary to realise significant returns.

Box 1: What is National Competition Policy?

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

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

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

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

Public interest test

NCP, microeconomic reform and globalisation have been claimed to result in adverse social outcomes.[5]

NCP is not concerned with reform or competition for its own sake. Rather, the focus is on competition reform that is in the 'public interest'. To this end, the *Competition Principles Agreement* (CPA) provides a

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

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).[6]

Further, the Council of Australian Governments at its 3 November 2000 meeting agreed, inter alia, to enhancements to the public interest test (see below).

The need for safeguards

Competition policy is not about the pursuit of competition for its own sake, but creating an environment that encourages effective competition in the interest of efficient resource use and maximum community benefit — a major factor being lower prices and better choice and quality for consumers.

However, situations may occur where competition does not achieve this outcome (due to market failure) or conflicts with other social objectives. In many instances, reforms will be complemented by a regulatory framework that provides a safety net against market structures failing to deliver adequate competitive outcomes, addresses markets that are in transition towards competitive structures, or enables the delivery of community service obligations.

Furthermore, reforms will often result in short-term adjustment costs — potentially concentrated on specific sectors or geographical regions. While greater than the costs, the benefits usually accrue over the longer term and are more widely spread across the community.

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

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

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6 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.

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

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

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

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

The Commonwealth's reporting requirement

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

- achieving the review and, where appropriate, reform of all existing legislation that restricts competition (as outlined in the Commonwealth Legislation Review Schedule)[7];
- implementing competitive neutrality principles (including allegations of non-compliance).

7 In November 2000, CoAG agreed to extend the deadline for this commitment from the end of the year 2000 to 30 June 2002 (see page 14).

However, to recognise fully the range of Commonwealth commitments established by the NCP Agreements, all areas of Commonwealth involvement have been reported.[8]

This report formally covers the period 1 July 1999 to 30 June 2000, although, where available, more recent information is provided in certain cases.

National Competition Policy Payments

Under the *Agreement to Implement the National Competition Policy and Related Reforms* (Implementation Agreement), the Commonwealth agreed to make competition payments to those States and Territories assessed as making satisfactory progress towards implementation of specified competition and related reforms.

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

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

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

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8 The commitments contained within the NCP Agreements apply to both Commonwealth and State and Territory Governments. This report discusses these commitments from the Commonwealth perspective.

- The third tranche of the competition payments commences in 2001-02, and involves a maximum annual payment of $600 million (in 1994-95 prices).

The Implementation Agreement specifies the commitments States and Territories must meet in order to receive the maximum competition payment. The National Competition Council (NCC) assesses each jurisdiction's performance in implementing the required reforms prior to the commencement of the three competition payments tranche periods — 1 July 1997, 1 July 1999 and 1 July 2001. This assessment forms the basis for determining State and Territory eligibility for payment.

In response to the NCC's June 1999 second tranche assessment of jurisdictions' progress in implementing NCP and related reforms, the Commonwealth made competition payments to the States and Territories amounting to more than $439.4 million. All States and Territories received their full allocation in 1999-2000, with the exception of Queensland. The Commonwealth accepted the NCC's recommendation that payments of approximately $14.8 million of its total 1999-2000 payment allocation of $81.5 million be suspended, pending a supplementary assessment by the NCC before the end of 1999.

The suspension was based on Queensland's inability to adequately demonstrate its commitment to a specific water reform measure, part of an agreed package of water reforms agreed to by all States and Territories.

The supplementary assessment allowed Queensland time to demonstrate its implementation of this reform, and have the suspended payment fully restored. The use of supplementary assessments recognises that while many jurisdictions are genuinely committed to reform, implementation is a complex and time-consuming process. This approach provides an incentive to continue reform rather than arbitrarily penalising States and Territories.

In February 2000, following the NCC's supplementary assessment recommending the removal of the penalty, the Commonwealth reinstated the suspended NCP payments to Queensland.

In response to the NCC's June and September 2000 supplementary assessments, the Commonwealth made NCP payments to the States and Territories for the period 2000-01, amounting to approximately $448.0 million.

These assessments determined whether the States and Territories addressed second tranche NCP commitments identified as outstanding in the NCC's initial assessment in June 1999.

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

In relation to Queensland, the Commonwealth accepted the Council's recommendations and suspended 10 per cent in relation to its failure to put in place an adequate Community Service Obligation framework to address competitive neutrality concerns arising from the operation of Queensland Rail, and a further 5 per cent in relation to insufficient progress in implementing two part tariffs for urban water charges. These suspensions amount to approximately $12.9 million of Queensland's maximum competition payments for 2000-01 of approximately $85.9 million.

The Northern Territory has had 5 per cent of its NCP payments suspended in relation to its failure to introduce the national driver demerits point scheme. This suspension amounts to approximately $235,614 of the Northern Territory's maximum NCP payment for 2000-01 of approximately $4.7 million.

These amounts may, however, be restored depending on the Commonwealth's response to further assessments by the NCC to be undertaken in the first half of 2001.

CoAG changes to National Competition Policy

At its 3 November 2000 meeting, the Council of Australian Governments (CoAG) confirmed the importance of NCP in sustaining the competitiveness and flexibility of the Australian economy and

contributing to higher living standards and agreed to several measures to clarify and fine-tune NCP implementation arrangements.

Changes to the application of NCP are detailed in Attachment B of CoAG's Communique, which are outlined below.

Changes to National Competition Policy arrangements

Transparency

- In meeting the requirements of sub-clauses 1(3)(a)(b) and (c) of the CPA, which relate to the application 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 clause 1(3) of the CPA, Governments should give consideration to explicitly identifying the likely impact of reform measures on specific industry sectors and communities, including expected costs in adjusting to change.

- CoAG to undertake an enhanced role in guiding the NCC in relation to its role in explaining and promoting NCP policy to the community.

NCC work program

- The NCC will determine its forward work program in consultation with CoAG Senior Officials.

- The NCC will provide a six monthly report to Senior Officials detailing its draft forward work program and current activities, including its communications and future assessment activities.

- Senior Officials will continue to provide guidance to the NCC to clarify CoAG's requirements in relation to the interpretation of reform commitments under the NCP and related reform agreements, including appropriate assessment benchmarks, as required.

Future assessment processes

- The NCC's assessment as to whether jurisdictions have met their commitments under clause 5(1) of the CPA will be guided by the following amendment to the CPA.

- 'In assessing whether the threshold requirement of Clause 5 has been achieved, the NCC should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached, it is a matter for Government to determine what policy is in the public interest.'

- Following the third tranche assessment to be conducted before 1 July 2001, the NCC will undertake an annual assessment of each party's performance in meeting its reform obligations, as specified in the *Agreement to Implement the National Competition Policy and Related Reforms* or as subsequently advised by CoAG, and provide a recommendation on the level of competition payments to be received by each State and Territory.

- In making a recommendation that a penalty be applied to a particular State or Territory, the NCC is to have regard to the following statement:

  When assessing the nature and level of any financial penalty or suspension, the NCC must take into account:

  - *the extent of overall commitment to the implementation of NCP by the relevant jurisdiction;*

  - *the effect of one jurisdiction's reform efforts on other jurisdictions; and*

  - *the impact of failure to undertake a particular reform.*

- Where the NCC recommends a penalty, a statement of reasons identifying the basis for this penalty is to be published in the NCC's annual assessment.

- Commencing in 2001, the assessments should be provided to the Commonwealth Treasurer and each State and Territory at the same

time, but will remain confidential until a decision has been made by the Commonwealth on the level of competition payments.

- Where an assessment recommends a penalty be applied to a State or Territory, the Commonwealth will provide a period of one month following receipt of the assessment before making a decision on the level of competition payments to be received by that jurisdiction. This will allow the relevant jurisdiction to respond to the Commonwealth on the recommendation made by the NCC.

- The timing of the imposition of any penalty will be discussed on a bilateral basis between the Commonwealth and the affected jurisdiction.

Legislation review schedule

- The deadline for legislation reviews conducted under clause 5(3) of the CPA is extended so that all jurisdictions must complete all legislation reviews and implement appropriate reforms by 30 June 2002.

- Satisfactory implementation of reforms may include, where justified by a public interest assessment, having in place a firm transitional arrangement that may extend beyond the revised deadline.

- The revision to the deadline does not alter the schedule of competition payments.

Competitive neutrality — assessment

The assessment of a party's compliance with the competitive neutrality requirements under clause 3 of the CPA should have regard to:

- the adoption of a 'best endeavours' approach to assessment, in those circumstances where a government business is not subject to the executive control of a party. This would require parties, at a minimum, to provide a transparent statement of CN obligations to the entity in question;

- the term 'full cost attribution' accommodating a range of costing methodologies, including fully distributed cost, marginal cost, avoidable cost etc., as appropriate in each particular case;

- there being no requirement for parties to undertake a competitive process for the delivery of Community Service Obligations (CSO); and

- parties being free to determine who should receive a CSO payment or subsidy, which should be transparent, appropriately costed and directly funded by government. This position refers directly to the implementation of CN requirements under the CPA, and is not intended to impact on consideration of CSO matters arising in the context of the related reform agreements.

Review

- The terms and operation of the *Conduct Code Agreement*, the *Competition Principles Agreement* and the *Agreement to Implement National Competition Policy and Related Reforms*, and the NCC's assessment role, will be reviewed before September 2005.

- The Commonwealth and States give early consideration to the best means of ensuring NCP commitments arising from the CCA continue to be met in light of the High Court case *re: Hughes*.

Proposed amendments to the *Conduct Code Agreement*

- The reference in clause 2(2) of the CCA to paragraph 51(1B)(f) of the *Trade Practices Act 1974* should be changed to paragraph 51(1C)(f), to correct a previous drafting error.

- References in clause 7 of the CCA to 'the Parties' should be replaced with 'fully participating jurisdictions'; the words 'the Party initiating the consultation' should be replaced with 'the Commonwealth'; and the words 'or some of them' should be deleted.

Proposed amendments to the *Agreement to Implement the National Competition Policy and Related Reforms*

- References to the per capita Financial Assistance Grants (FAGs) component of the NCP payments to be removed, and 'States' to be replaced with 'States and Territories';

- The payments table attached to the Agreement to be deleted.

Review of the NCP agreements

The *Conduct Code Agreement* and the *Competition Principles Agreement* (CPA) required the Commonwealth, State and Territory Governments to review the operation and terms of each Agreement once it had operated for five years. The CPA also requires the review of the need for and the operation of the NCC once it has been in place for five years.

A working group was established by CoAG Senior Officials to undertake the review. It was chaired by the Commonwealth Treasury, and included a representative of the Australian Local Government Association. The working group was required to report, through CoAG Senior Officials, to CoAG.

CoAG Senior Officials considered the working group's report in the second half of 2000. The working group's recommendations were aimed at fine-tuning and clarifying the operation of the NCC and several NCP reform commitments. Subsequently, at the 3 November 2000 meeting of CoAG, these measures were adopted.

Treasury internet site

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

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

1. Legislation review

1.1 Why is legislation review necessary?

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

In recognition of this, the 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 to its retention.

The requirement to demonstrate net community benefit also applies to the introduction of new or amended legislation that restricts competition. To satisfy this commitment the Commonwealth introduced its regulation impact assessment process (see Section 1.4).

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* (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.[9]

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

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

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

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 and a particular course of action means that these can be explicitly considered in the decision making process, rather then 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 taken into account:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- 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.[10]

Commonwealth compliance with its 1999-2000 legislation review requirements is independently assessed by the Productivity

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

Commission[11] and reported in *Regulation and its Review 1999-2000* and by the NCC.

A detailed examination of Commonwealth progress during 1999-2000 in the review and reform of existing anti-competitive legislation is contained in section 1.2.1. A summary of compliance with regulation impact assessment requirements for legislation introduced or amended after 1995 is in Section 1.4.

Where Commonwealth legislation is complemented or matched by State or Territory regulation, a coordinated 'national review' may be undertaken. Commonwealth participation in national reviews for the period 1999-2000 is examined in Section 1.3.

1.2 Commonwealth legislation review schedule

The *Commonwealth Legislation Review Schedule* (CLRS) details the Commonwealth's timetable for the review and, where appropriate, reform of all existing legislation that restricts competition or imposes costs or confers benefits on business, by the year 2000.[12]

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.[13]

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

Any changes to the CLRS requires the approval of the Prime Minister, Treasurer and the responsible Portfolio Minister(s). Within the Treasury portfolio, the Treasurer's CLRS role is normally performed by the Minister for Financial Services and Regulation.

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

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

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

The CLRS as at 30 June 2000 is at Appendix A.

Reporting requirements for legislation reviews

The following sections provide information on Commonwealth progress during 1999-2000 in meeting its scheduled legislation review commitments.

The reviews have been organised to reflect both the scheduled commencement date, and the degree of progress made to date. For each individual review, information is provided on the following:

Complexity of the review and details of the review panel

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

The ministerial portfolio with current responsibility for the legislation,[14] and the commencement date of the review, is also identified.

Terms of reference

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

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;

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14 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.

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

The Office of Regulation Review (ORR) is required to approve the terms of reference for any scheduled Commonwealth review. To assist this process, and to ensure a consistent approach and focus to reviews, the ORR has developed a template terms of reference to be tailored to suit each piece of legislation to be reviewed.[15]

A copy of each review's terms of reference is included in an attachment to this report (see page 199).

Extent of public consultation

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

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

Review progress or recommendations and government response

Further information is reported depending on the extent of progress of the review. Where the review has been completed, if possible, a

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

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.

1.2.1. Legislation Scheduled for Review in 1999-2000

This section outlines progress in those legislation reviews scheduled to commence in 1999-2000. The reviews are grouped according to the extent of progress made.[16]

1.2.1.1 Reviews completed, recommendations under consideration

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

The review of this Act was included in the National Review of Petroleum (Submerged Lands) Acts (see page 98).

1.2.1.2 Reviews commenced but not completed

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

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

The review of the Export Control (Unprocessed Wood) Regulations under the *Export Control Act 1982* was originally scheduled for review in 1997-98 however, it was deferred to 1999-2000.

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

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

The review panel is composed of: Rob Rawson, General Manager, Forestry Industry, AFFA; Chris Sant, Office of Legislative Drafting; Richard Sisson, Innovation and Operating Environment, AFFA. AFFA is providing secretariat support.

Review progress

The review is expected to commence in the second half of 2000 and be completed in 2001.

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

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

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

Review progress

The Productivity Commission (PC) has released an issues paper. Public hearings were held in late November and early December.

A draft report was released in April 2001 and the final report is due by 16 August 2001.

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

The legislation implements Australia's international environmental obligations with regard to the import or export of hazardous wastes.

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

The review is being undertaken by a taskforce, which comprises seconded officials from Environment Australia, the Attorney-General's Department, the Department of Foreign Affairs and Trade, the Department of Industry, Science and Resources and the Department of Health and Aged Care. The taskforce is supported by the Hazardous Waste Act Policy Reference Group, acting as a reference group of independent members.

Review progress

An Issues and Options paper has been prepared which formed the basis of a call for submissions, advertised on 28 and 29 July 2000. Submissions were due by 3 October 2000, and a consultant's report based on the submission was received by the taskforce on 18 October 2000.

The taskforce's report is due on 30 November 2000.

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

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

The terms of reference were agreed to in early 2000.

The review panel is made up of representatives from Environment Australia, the Australian Greenhouse Office and the Attorney-General's Department, and is assisted by PricewaterhouseCoopers.

Review progress

An issues paper was released in April 2000, seeking submissions on the impact and effectiveness of the current regime by 23 May. A draft report

was released in September 2000, along with a discussion paper canvassing reforms and alternatives to the current legislation.

The draft report identifies various possible avenues for anti-competitive effects arising from the legislated phase out of ozone depleting substances, however none of the submissions indicated that anti-competitive behaviour was perceived as a problem.

Submissions on the basis of the draft report and discussion paper were due by 1 November 2000.

The final report, based on the submissions and a series of public consultations in October, is due out in December 2000. A government response will be made after the release of the final report.

The papers identified above are available on the Internet at: www.environment.gov.au/epg/ozone.

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

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

The review commenced in June 2000 and is being undertaken by the PC.

Review progress

The PC released an issues paper on 11 October 2000. A position paper was released in March 2001. The final report is due in October 2001.

Prices Surveillance Act 1983
(Department of the Treasury)

The Prices Surveillance Act (PSA) assigns three specific functions to the Australian Competition and Consumer Commission (ACCC). These are: to review price rises notified to the ACCC by certain organisations (this

function is commonly referred to as 'prices surveillance'); undertake monitoring of prices or other matters for particular organisations, products or services (called the monitoring function); and to hold inquiries into price and other matters as directed by the Commonwealth Government (the inquiries function).

The Productivity Commission (PC) commenced a nine month inquiry on 14 February 2000, for which the reporting date was later extended to August 2001. This extension was so that the inquiry could be conducted in tandem with a review of the National Access Regime (see page 27), to accommodate overlapping issues.

Review progress

The Productivity Commission released an issues paper in March 2000, an interim report in October 2000 and a draft report in March 2001.

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

The objective of the *Wheat Marketing Act 1989* is 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 on 4 April 2000.

The review, with secretariat support provided by the Department of Agriculture, Fisheries and Forestry, 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 in Australia.

Review progress

The review released a draft report in October 2000. A final report was provided to the Minister for Agriculture, Fisheries and Forestry before the end of December 2000.

1.2.1.3 Reviews not commenced

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

Section 2D of the *Trade Practices Act 1974* (TPA) exempts the licensing decisions and internal transactions of local government bodies from Part IV of the TPA. Part IV of the TPA regulates restrictive trade practices.

This review had not commenced by 30 June 2000. Subsequently, the terms of reference for a twelve month review were approved at the Commonwealth level on 9 October 2000.

The Commonwealth intends to forward the terms of reference to the Productivity Commission in 2001 after consultations with State Premiers and Territory Chief Ministers and subject to the work load of the Productivity Commission.

Anti-dumping Authority Act 1988, Customs Act 1901 Part XVB and Customs Tariff (Anti-dumping) Act 1975
(Attorney-General's Department)

This review was deferred to 1999 and had not commenced by 30 June 2000.

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

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

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

This review had not commenced by 30 June 2000.

The Department is discussing the terms of reference with the ORR.

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

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

This review had not commenced by 30 June 2000. Discussions are taking place to determine an appropriate body to carry out the review, the terms of reference and to reach agreement on a revised time frame.

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

On 24 August 1999, the Minister for Financial Services & Regulation agreed to defer this review until the second half of 2000. The Minister also agreed to the deletion of the following acts from the CLRS: *Dried Vine Fruits Equalization Act 1978, Dried Sultana Production Underwriting Act 1982* (upon the repeal of the Act) and *Dried Vine Fruits Legislation Amendment Act 1991* (upon repeal of the *Dried Sultana Production Underwriting Act*).

In 1998, a major review was initiated by the horticultural industry, the Australian Horticultural Corporation (AHC) and the Horticulture Research and Development Corporation, with a view to creating a single entity delivering both marketing and research and development services. The Horticultural Industry Alliance Steering Committee (HIASC) was subsequently formed to drive the process. Given only two regulations under the *Australian Horticultural Corporation Act 1987* (AHC Act) relevant to dried fruits remain on the CLRS, and given this Act and its

regulations were reviewed as part of the major horticultural industry review, the scheduled review of dried vine fruits legislation has been deferred until the completion of the major horticultural industry review.

As a result of the review process, legislation to effect the repeal of the dried vine fruit regulations under the AHC Act is before Parliament.

Export Finance & Insurance Corporation Act 1991, Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991
(Department of Foreign Affairs and Trade)

This review has been deferred pending the outcome of a separate review process required by the Government, and expected to address similar issues.

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

This review had not commenced by 30 June 2000.

In October 2000, the Minister for Aged Care wrote to the Prime Minister and the Minister for Financial Services and Regulation seeking agreement to the deferral of the review pending an assessment of the degree to which the Regulation Impact Statement process for the *National Program Guidelines for the Home and Community Care Program* met the intended objectives of the review.

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

This review had not commenced by 30 June 2000.

Superannuation Acts including: Occupational Superannuation Standards Regulations Applications Act 1992,
Superannuation (Self Managed Superannuation Funds) Taxation Act 1987 (formerly the Superannuation (Excluded Funds) Taxation Act 1987),
Superannuation (Financial Assistance Funding) Levy Act 1993,

Superannuation (Industry) Supervision Act 1993, Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991 (formerly the Superannuation (Excluded Funds) Supervisory Levy Act 1991), Superannuation (Resolution of Complaints) Act 1993.
(Department of the Treasury)

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

This review was originally scheduled to commence in 1997-98 but has been deferred twice. It was scheduled to commence in 1999-2000. The review had not commenced by 30 June 2000.

The review commenced in 2001 and is being conducted by the Productivity Commission.

1.2.2 Legislation Scheduled for Review in 1998-99 — Reform not finalised by 30 June 1999

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

This section updates the progress of these reviews and any reforms that have consequently been implemented.

1.2.2.1 Reviews completed and reform outcomes announced

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

Part X of the *Trade Practices Act 1974* (TPA) regulates the conditions under which international liner shipping companies are permitted to collaborate as conferences in Australia in order to provide joint liner services. Part X provides certain exemptions from Part IV of the TPA, which in relation to outwards liner shipping services involve various obligations towards Australian exporters.

Review progress

The review of Part X by the Productivity Commission commenced in March 1999 and the resulting report was provided to the Government in September 1999.

Government response

In December 1999, the Government announced its decision to retain Part X and make various enhancements, as recommended by the Productivity Commission, together with some further amendments to bring Part X more into line with NCP principles.

Subsequently the *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000* was granted Royal Assent on 5 October 2000. Part 1 of the amending Act entered into force on 2 November 2000, and Part 2

(dealing with inwards liner cargo shipping) entered into force on 2 March 2001.

The *Trade Practices Amendment (International Liner Cargo Shipping) Act 2000* amends Part X in the following ways:

- the Part X exemptions (from the competition rules in sections 45 and 47 of the TPA) are now limited to liner shipping activities covering ocean transport and loading and discharge operations at cargo terminals, including inland terminals used for assembling export cargo for delivery to a port, or delivering cargo to importers;

- the protection afforded to exporters under Part X is extended to importers (from 2 March 2001) as far as practicable. This includes requirements that parties to an inwards conference agreement register their agreements and negotiate with the relevant designated body representing importers in respect of charges for land-based services in Australia, and for other matters in cases where the contract for shipping the cargo is made in Australia; there is a procedure for avoiding conflicts of jurisdiction with the country of export through a system of Ministerial Exemption Orders to deal with problems that may arise from overlapping jurisdictions. Exemption orders are instruments disallowable by Parliament;

- the Minister for Transport and Regional Services and the ACCC have increased powers to deal with conduct likely to result in an unreasonable increase in freight rates and/or an unreasonable decrease in services; the increased powers are to be used only in exceptional circumstances such as those where an agreement covers most carriers or capacity on a trade route; actions under the additional powers are appealable to the Australian Competition Tribunal;

- the Minister and ACCC are now empowered to accept court enforceable undertakings, given by shipping lines; section 10.17A and 10.18A have been replaced by sections (with the same numbers) that clarify the requirement that liner shipping companies are not allowed to collectively agree on freight rates unless they have a registered conference agreement to which those freight rates apply.

The Australian Government Solicitor advised that there was some ambiguity about this in the previous sections 10.17A and 10.18A;

- liner conference will not be permitted to unreasonably restrict entry of new parties;

- a national interest test is included in assessing conduct by parties to an outwards liner shipping agreement that might unreasonably hinder Australian flag shipping; and

- Section 10.05 prohibiting discrimination between shippers was repealed. The Productivity Commission recommended this on the grounds that the provision served no useful purpose, and could be harmful if it discourages efficient price discrimination.

1.2.2.2 Reviews completed, recommendations under consideration

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

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

The review commenced in March 1999.

Review Progress

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

The review's recommendations are:

Managing broadcasting spectrum

Recommendation 6.1

Licences granting access to spectrum should be separated from content related licences that grant permission to broadcast.

Recommendation 6.2

Spectrum for new broadcasts should be sold competitively, subject to ongoing licence fees. The level of ongoing fees should be adjusted to reflect significant changes in the value of spectrum.

Recommendation 6.3

Licence fees for existing commercial radio and television broadcasters should be converted to fees that reflect the opportunity cost of spectrum used.

Revenue based licence fees for each service type (television, FM radio and AM radio) in each licence area should be converted to spectrum-based licence fees. These fees should be revenue neutral in the first year and set thereafter on a basis similar to the fees for other spectrum.

Recommendation 6.4

During the digital television conversion period, existing television broadcasters should be levied additional fees on any of the spectrum used for digital services other than digital simulcast of the analog program, consistent with those paid by other digital broadcasters.

Recommendation 6.5

If a government wishes to ensure community access to commercial digital broadcasting services in areas where they are not commercially viable, this should be achieved through explicit subsidy arrangements allocated through the tender of a community service obligation that does not specify the means of delivery.

Recommendation 6.6

The ABA, in consultation with the broadcasting industry and the public, should develop a series of templates for licence areas with different

characteristics, setting out the number of national, community and Indigenous services for which spectrum should be reserved. All unreserved broadcasting spectrum should be made available for commercial broadcasting.

Recommendation 6.7

The value of broadcasting services bands spectrum reserved for non-commercial broadcasting services should be estimated and reported publicly.

Recommendation 6.8

The planning criteria for the broadcasting service bands, currently found in s. 23 of the BSA, should, for commercial broadcasting, be restricted to those relevant to the technical planning of the spectrum.

Recommendation 6.9

The ABA should retain responsibility for issuing licenses to broadcast, and for determining the number of non-commercial broadcasting licences in an area. It should also retain responsibility for regulating content, enforcing codes of practice and monitoring ownership.

Recommendation 6.10

Responsibility for planning and licensing the broadcasting services bands of the spectrum should be transferred to the Australian Communications Authority and managed under the provisions of the Radiocommunications Act.

Recommendation 6.11

Spectrum used for commercial narrowcasting should be made available using the same processes and on the same terms (including renewability) as those for spectrum for commercial broadcasters.

From analog to digital

Recommendation 7.1

Prior to the commencement of digital terrestrial television on 2001, the digital television conversion plan should be modified:

- The Government should set a firm and final date of 1 January 2009 for the end of the simulcast period. The final date should apply to metropolitan and regional areas;

- Necessary amendments should be made to provide for shorter simulcasting period, enabling the switch-off of analog services earlier than 2009 in areas where that proves feasible; and

- The Government should formulate and publish specific criteria suitable for approving the early switch-off of analog services.

Recommendation 7.2

The digital television conversion plan should be further modified:

- Prior to the sale of any spectrum in the broadcasting services bands in 2000, the Government should announce its intention to release and sell any spectrum which becomes available for digital broadcasting during the conversion period;

- Within two years of the commencement of digital broadcasting in a licence area, unassigned channels should be identified and sold for new digital broadcasting services;

- Within two years of the commencement of digital broadcasting in a licence area, channels suitable for low cost spectrum clearance should be identified. The channels should be sold for new digital broadcasting services, subject to clearance of the spectrum by the purchaser; and

- Two years prior to the termination of the simulcast period, the spectrum manager should plan and sell for new digital services all remaining spectrum used for analog television broadcasting, with possession after analog switch-off.

Recommendation 7.3

As the digital switch-off proceeds, the Government should design appropriate policies to ensure switch-off of analog services on 1 January 2009 in areas of slow take-up.

Recommendation 7.4

A new digital regulatory framework will facilitate consumers' adoption of digital television:

- High definition transmission will facilitate consumers' adoption of digital television;
- Datacasting services should be defined as digital broadcasting services; and
- Multichannelling and the provision of interactive services by commercial and national broadcasters should be permitted. The proposed reviews of multichannelling and subscription broadcasting by free to air services should be cancelled.

Recommendation 7.5

Digital radio policy should be modified:

- Analog radio broadcasting licences should not be converted without a charge to digital licences;
- Spectrum for new commercial digital radio services should be sold by a competitive process; and
- Existing commercial radio broadcasters should not be constrained from participating in the new medium.

Structural diversity in Australian broadcasting

Recommendation 8.1

The ABA should conduct regular research on the demand for community radio and television programming.

Recommendation 8.2

The ABA should conduct evaluations of existing community licences before renewal every five years to assess whether licensees are meeting the objectives of the licence. The licence should be offered for reallocation if a licensee has not succeeded in meeting its objectives.

Recommendation 8.3

The ABA should review the allocation of each community broadcasting licence every 10 years.

Recommendation 8.4

If demand exists for non-profit television services in a licence area, a standard definition channel should be made available by the digital broadcaster that tenders for the lowest Government subsidy to do so. The tender should be let prior to the switch-off of analog television.

Recommendation 8.5

A new licence category for Indigenous broadcasters should be created, with appropriate conditions relating to advertising.

Recommendation 8.6

Spectrum should be reserved for Indigenous broadcasters to provide a primary service for Indigenous communities, where appropriate.

Recommendation 8.7

The Government should examine the need for, and feasibility of, establishing an Indigenous broadcasting service, including:

- who should provide the service;
- how the service should be provided;
- the additional government resources required; and
- a timetable for implementation.

Recommendation 8.8

The restrictions on advertising and sponsorship on subscription television services should be removed.

Recommendation 8.9

Subscription television channel providers should be licensed separately from the subscription television carrier.

Recommendation 8.10

Education providers and government agencies should share access with community groups to a standard definition digital television channel which could be made available in each licence area where there is sufficient demand.

Concentration, diversity and regulatory barriers to entry in Australian media

Recommendation 9.1

When the non-technical criteria in s. 23 are removed, spectrum plans should be reviewed to make any unallocated spectrum available for sale.

Recommendation 9.2

Section 28 of the BSA, which prevents any new commercial television licences being allocated before 31 December 2006, should be repealed immediately.

Ownership and control

Recommendation 10.1

Foreign investment in broadcasting should be covered by Australia's general foreign investment policy. All restrictions on foreign investment, ownership and control in the BSA should be repealed.

Recommendation 10.2

If recommendation 10.1 is not adopted, the BSA should be amended immediately to remove restrictions on investment by foreign managed, but Australian sourced, funds in Australian commercial television businesses.

Recommendation 10.3

The *Trade Practices Act 1974* should be amended immediately to include a media-specific public interest test which would apply to all proposed media mergers. The test would be administered by the Australian Competition and Consumer Commission, (ACCC) and require that the commission seek ABA input on social, cultural and political dimensions of the public interest.

Recommendation 10.4

After the following conditions have been met:

- removal of regulatory barriers to entry in broadcasting (s. 28 and the s. 23 non-technical criteria), together with the availability of spectrum for new broadcasters;
- repeal of BSA restrictions on foreign investment, ownership and control; and
- amendment to the *Trade Practices Act 1974* to provide for a media-specific public interest test to apply to mergers and acquisitions;

the cross-media rules should be removed.

Recommendation 10.5

The retention of the audience reach rule should be reviewed in the light of developments in new digital broadcasting and information services.

Recommendation 10.6

As the normal competition provisions of the *Trade Practices Act 1974* would apply to mergers of commercial broadcasting licences within a licence area, ss. 54 and 53(2) of the BSA should be repealed.

Australian content regulation

Recommendation 11.1

The Australian content quota of 80 per cent for advertisements on all commercial television stations should be removed immediately.

Recommendation 11.2

The Australian production expenditure quota of 10 per cent for subscription adult and children's drama channels should be removed immediately.

Recommendation 11.3

For all current and future policies and regulations aimed at achieving the social and cultural objectives of broadcasting, the ABA should conduct regular, public evaluations against the stated policy objectives.

Recommendation 11.4

To ensure that the social and cultural objectives of broadcasting continue to be addressed in the future digital media environment, the Government should:

- commission an independent, public inquiry into Australian audiovisual industry and cultural policy, to be completed by 2004; and

- following this review, but prior to the final switch-off of analog services, implement a new framework of audiovisual industry and cultural policy.

Until this new policy is implemented, the following quotas for free to air commercial broadcasters should be retained in their current form and at their current levels:

- the overall transmission quota of 55 per cent for Australian programming;

- the Australian first release drama quota; and

- all quotas for children's 'C' and preschool 'P' programs.

Broadcasting of sport

Recommendation 12.1

Broadcasters in one form of broadcasting should be allowed to acquire the broadcast rights of sporting events of major national significance to the exclusion of those in other forms of broadcasting.

Recommendation 12.2

Criteria for a new and much shorter anti-siphoning provisions should include:

- demonstrated national significance, such as Australian involvement;
- events that have been consistently broadcast by free to air television stations in the past five years; and
- events that have received a high level of viewing by Australian audiences, as determined by ratings.

Recommendation 12.3

Responsibility for administration of the anti-siphoning provisions should be transferred from the Minister to the ABA, and procedures should be streamlined to reduce the time taken for decisions and to improve their certainty and transparency.

Codes, conditions and compliance

Recommendation 13.1

The ABA should undertake or commission research into the influence of the various forms of media on Australian society.

Recommendation 13.2

A further objective 'to promote freedom of expression' should be added to the objectives in s. 3 of the BSA.

Recommendation 13.3

Schedule 2 of the BSA should be amended to impose the following conditions on broadcasters' licences.

Broadcasters must take reasonable steps to:

- prevent the broadcasting of programs that, in accordance with community standards, are not suitable for their section of the industry to broadcast;

- ensure the protection of children from exposure to potentially harmful program material; and

- provide methods for handling complaints.

Compliance with a relevant, registered code of practice covering these matters would be deemed to be evidence of having taken 'reasonable steps'. However, compliance with a code need not be the only means of satisfying these requirements.

Recommendation 13.4

The ABA should actively promote ethical practices in broadcasting. It should develop standards dealing with fair and accurate coverage and ethical news gathering and reporting practices. Among other provisions, these standards should provide that:

- such complaints may be made to either the ABA or the licensee in the first instance;

- licensees must inform the ABA of such complaints and their proposed action as soon as practicable;

- the ABA must actively monitor the actions of the licensee in response to the complaint; and

- the ABA must exercise its powers to direct licensees to take certain actions (including broadcasting retractions and corrections) in response to complaints about fair and accurate coverage.

Recommendation 13.5

The mechanisms for consultation on the development of codes of practices should be amended such that:

- a requirement for general support from within the relevant section of the industry replaces the requirement that a majority of broadcasters within the relevant section of broadcasting endorse a proposed code of practice;

- the ABA, in consultation with industry, develops guidelines on how it will assess whether a code has 'general support from within the relevant sections of the industry'; and

- the ABA, in consultation with industry and the community, develops guidelines on 'adequate opportunity to comment' to support community consultation on a proposed code of practice.

Recommendation 13.6

The co-regulatory scheme should be amended such that:

- all codes of practice include the requirement for community service announcements about the complaints mechanism to be broadcast at peak or other appropriate audience times;

- the ABA undertakes ongoing monitoring of community awareness of complaints mechanisms;

- licensees are required to accept e-mailed complaints as well as written and faxed complaints; and

- each industry group covered by a code of practice is required to institute a telephone complaints system which would advise complainants of their rights and on which complainants may record telephone complaints. These complaints should be forwarded promptly to the relevant broadcaster, and a summary of these complaints should be provided to the ABA.

Recommendation 13.7

The co-regulatory scheme should be amended such that, in addition to existing sanctions:

- licensees found to be in breach of a relevant licence condition are required to broadcast an on-air announcement of the breach finding and subsequent action during the relevant program or time slot; and

- the ABA is given the power to issue directions for action to broadcasters found in breach of a relevant licence condition.

Recommendation 13.8

The regulatory scheme for controlling access to online content, including the legislative requirements on Internet content hosts and Internet service providers, the associated codes of practice, and the NetAltert initiative, associated hotline and community education campaigns, should be reviewed after one year of operation. The review should encompass:

- the scheme's success in regulating access to objectionable material;
- the scheme's effect on Internet service providers, Internet content hosts and online commerce;
- the scheme's effect on freedom of expression and access to educational, artistic and political material; and
- the scheme's compliance and administrative costs.

Government response

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

Export Control Act 1982 (such as fish, grains, dairy, processed foods etc)

(Department of Agriculture, Fisheries and Forestry)

The *Export Control Act 1982* provides a comprehensive legislative base for the export inspection and control responsibilities for certain goods.

The review (in relation to goods such as fish, grains, dairy, and processed foods) commenced in January 1999.

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

Review progress

The report was finalised on 23 December 1999, and released to the public in February 2000.

The review recommendations are:

Recommendation 1: Retention of the Act

The Review Committee recommends that:

- the Export Control Act be retained, in its current form, and with its current general structure;
- the title of the Act to be changed to the 'Export Assurance Act'; and
- specific amendments be made in the areas of: the objectives of the Act; the scope of the legislation; adoption of a three-tier system of export assurance; and, legislative monitoring, as outlined in other Recommendations in this Report, to ensure that the Act properly conforms to the NCP and is relevant to current export requirements.

Recommendation 2: Objectives of the Legislation

The Review Committee recommends that the Act be amended to include a statement of specific objectives.

Recommendation 3: Adoption of an Integrated Export Assurance System (Three Tier Model)

The Review Committee recommends that programs established under the Export Control Act be administered under a three tier model comprising:

- Australian Standards (Tier 1);
- standards set by overseas governments for access to their markets (Tier 2); and
- market-specific requirements determined by government and industry (Tier 3).

Recommendation 4: Harmonisation of Domestic and Export Standards

The Review Committee recommends that domestic and export standards for the production of food and agriculture products in Australia be harmonised, and that they be consistent with relevant international standards.

Recommendation 5: Certification by a Single Authority

The Review Committee recommends that certification of Australian export products continue to be administered by a single government based agency.

Recommendation 6: Contestability of Monitoring, Auditing and Inspection

The Review Committee recommends that monitoring and inspection arrangements be made fully contestable under all programs as soon as third party arrangements are acceptable to overseas governments.

Recommendation 7: Scope of the Legislation

The Review Committee recommends that the focus of the Act extend through the entire food chain and not rely primarily on the product preparation stages immediately prior to export, as occurs at present.

Recommendation 8: Criteria for Application of Legislation

The Review Committee recommends that specific criteria for the application of the Act be prepared in consultation with industry.

Recommendation 9: Certification of Non-Prescribed Goods

The Review Committee recommends that only prescribed goods be certified under the Act.

Recommendation 10: Review of Individual Programs against NCP Principles

The Review Committee recommends that QEAC establish a program of periodic monitoring of the operation of regulation, particularly in economic terms, ensuring that:

- the activity under the Act and its administration are measurable against its objectives;

- the Act be periodically monitored in relation to the net benefit it confers.

Recommendation 11: Accelerate the Current Review of Existing Subordinate Legislation

The Review Committee recommends that the current review of subordinate legislation should be accelerated, and conducted with reference to the principles expressed in this Report, in particular, reflecting the partnership between government and industry, and the assumption of greater industry responsibility.

Recommendation 12: Co-responsibility for Strategy and Program Delivery

The Review Committee recommends:

- a Development Committee be established for each program;

- membership of the Committee comprise representatives of AQIS and industry;

- the Committee operate independently and be charged with specific responsibility to:

  - determine strategies;

  - establish priorities; and

  - approve plans for their implementation;

- QEAC review the performance of these committees biennially and report to the Minister against the adoption plans.

Recommendation 13: Electronic Commerce

The Review Committee recommends that AQIS move quickly to align the administration of the regulation with current Government policy on electronic commerce, recognising in particular:

- advantages in establishing more easily accessible information bases and information services for stakeholders on such issues as importing requirements and microbiological testing; and

- the benefits of placing a greater emphasis on electronic commerce, particularly given government policy on this issue.

Recommendation 14: Implementation

The Review Committee recommends that the outcome of this Review and its Recommendations be included as part of the CoAG policy on the reform of food regulation, and further that:

- AFFA/AQIS progress the recommendations in this context by developing an implementation plan with milestones for achievement over the next five years. The plan must show substantial changes occurring within 18 months;

- The Minister establishes a reporting framework for progress on implementation of recommendations taking into account the role of other government bodies, apart from AQIS. Implementation of the Committee's vision depends on securing commitment from Commonwealth bodies such as ANZFA and all State and Territory Governments; and

- ARMCANZ oversee implementation of the Three Tier model and facilitate harmonisation of State/Commonwealth standards for each industry or program area encompassed by the *Export Control Act*.

Government response

Material supporting the Government response is in preparation and, due to the diverse nature of industry and the need to consult in detail, the final Government response is not expected until early 2001.

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

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

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

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

Review progress

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

Intellectual Property Protection Legislation (Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968 and Circuit Layouts Act 1989)

(Department of Industry, Science and Resources, Attorney-General's Department)

The objective of each of these Acts is to encourage investment in innovation and creative effort for the benefit of society. Without intellectual property rights, it will be possible for free-riders to easily copy work by others and so the original creators will not receive appropriate rewards for their investment; thus there will be little incentive to invest in creative effort.

The review of the intellectual property protection legislation (*Designs Act 1906*, *Patents Act 1990*, *Trade Marks Act 1995*, *Copyright Act 1968* and *Circuit Layouts Act 1989*) commenced in June 1999. The review was undertaken by an independent committee of review comprising Mr Henry Ergas (Chairman), Associate Professor Jill McKeough and Mr John Stonier.

The review was announced in national newspapers on 17 July 1999 and expressions of interest were sought from interested parties by 1 November 1999. Additional announcements were made in selected regional and capital city newspapers on 23 October 1999.

After preliminary consultation and research, the committee released and *Issues Paper* in September 1999, to stimulate public discussion on the issues being examined by the review. This paper raised potential issues for consideration and invited further comments and written submissions from interested parties. The Committee met with groups and individuals to discuss issues of concern. It received 83 written submissions.

The committee produced and invited further comment on an *Interim Report* released in April 2000. This report identified perceived problems requiring further consideration, provided description and background on areas of concern, set out broad policy objectives which the Committee believed should be pursued, and presented the committee's preliminary views on options for achieving the objectives. Following the *Interim Report*, a further 56 written submissions were received.

A number of further public consultations were also held in Canberra, and seminars were held in Melbourne and Sydney during April and May 2000. In addition, the Committee sought input from experts invited to round-table discussions on issues relating to patents, copyright and section 51(3) of the Trade Practices Act.

Review progress

The committee received a significant number of representations from interested parties stating that they found it difficult, or impossible, to meet the advertised timeframes for providing written submissions on the *Interim Report*. As a consequence, the committee sought an extension of time to deliver its final report. Additional time was granted on some, but not all, issues. The committee was asked by Ministers to report on the parallel importation of copyright material by 30 June 2000 and on all other issues, on or before 30 September 2000.

The review committee presented its *Report on Parallel Importing under the Copyright Act 1968* in June 2000 and its final report, *Review of Intellectual Property Legislation under the Competition Principles Agreement*, dated September 2000. The earlier report was published in August 2000. The Ministers to whom the final report was made have yet to decide when it will be published.

Government response

The Government response to the final report is still to be determined. In June 2000, the Government announced the decision to allow parallel imports of books, periodicals, printed music and software products (with the decision being informed, inter alia, by the June 2000 report noted above).

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

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

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

Officers from within the Department of Finance and Administration undertook the review and reported to an internal Steering Committee.

The review was advertised nationally and public comment sought from interested persons.

Review progress

The review identified some operational and administrative issues but concluded that the legislation substantially complies with competition policy principles.

A report of the review has been submitted to the Minister for Finance and Administration and is under consideration.

1.2.2.3 Reviews commenced but not completed

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

The review of the Food Standards Code commenced in May 2000. It is being undertaken by a Review Committee representatives from the Department of the Treasury, the Department of Agriculture, Fisheries and Forestry, the Department of Industry, Science and Resources, the Department of Health and Aged Care and the Office of Small Business.

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

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

Review progress

The Review is expected to be completed in 2001.

Fisheries Legislation
(Department of Agriculture, Fisheries and Forestry)

The review encompasses a number of Commonwealth Acts that govern fisheries management in Australian waters. The most significant being the *Fisheries Management Act 1991* and the *Fisheries Administration Act 1991*, which set out the objectives of the Commonwealth's

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

The review commenced in October 1998. It is being conducted by a committee of officials, chaired by Mr Fred Woodhouse; Mr Angus Horwood, RECFISH, Mr Frank Meere, Acting General Manager, Australian Fisheries Management Authority; Mr Bill Nagle, Chief Executive Officer, Australian Seafood Industry Council; Dr Connall O'Connell, First Assistant Secretary, Environment Australia; Dr Ian Poiner, Program Manager, Marine Research, CSIRO and Mr Andrew Pearson, Director, Fisheries Policy and Trade Section, AFFA.

An issues paper was released in April 1999, and submissions called for by 8 June 1999. A total of 12 submissions were received.

Review progress

It is expected that this review will be completed in November 2000. The Government response is expected in 2001.

Health Insurance Act 1973 Part IIA
(Department of Health and Aged Care)

The *Pathology Quality and Outlays Agreement* is the second co-operative agreement between the Commonwealth Government, the Royal College of Pathologists of Australasia and the Australian Association of Pathology Practices Inc. to manage pathology expenditure under Medicare, facilitate structural reform in the pathology sector and improve quality in pathology testing, use and practice.

One of the key elements of this agreement is for a comprehensive review of the regulatory framework for pathology under the Medicare agreements to be conducted within the life of this agreement.

This review was added to the CLRS for review in 1998-99 and commenced in January 2000.

The review is being overseen by a steering committee comprised of Mr David Borthwick, Deputy Secretary, Department of Health and Aged Care (Chair); Mr John Jepsen, General Manager, Structural Reform Division, Department of the Treasury and Ms Christianna Cobbold, Assistant Secretary, Health Capacity Development Branch, Health Industry Investment Division, Department of Health and Aged Care.

The review has undertaken a two-stage consultation process.

Over 1000 written invitations for submissions were sent to a range of stakeholder groups including medical colleges, medical and scientific representative organisations, advisory committees, State and Territory health authorities, pathology providers, pathology representatives, general practitioner representative organisations and consumer groups.

An advertisement was placed in major metropolitan newspapers throughout Australia and in medial publications seeking written submissions for the review. The initial deadline for the receipt of submissions was extended by one month in response to requests from a number of stakeholders.

The review received 59 written submissions from a range of groups and individuals including the major pathology representatives, the Australian Medical Association (AMA), the Royal Australian College of General Practitioners (RACGP), medical practitioners, divisions of general practice and other specific issue representatives.

In addition to seeking written submissions, the steering committee met with a range of stakeholders. Prior to lodging their final submissions, the Royal College of Pathologists of Australasia (RCPA) and the Australian Association of Pathology Practices Incorporated (AAPP) met with the steering committee.

Following the lodgement of the submissions, the steering committee met with: the AMA and the RACGP who had requested the opportunity to meet the steering committee together; the National Coalition of Public Pathology; the Western Australian Centre for Pathology and Medical

Research (PathCentre); the RCPA and AAPP who also attended together at their request; Queensland Health and NSW Health.

A freecall telephone line was established to allow people to call from anywhere in Australia at no charge. A generic electronic mailbox was established to allow for electronic communication with the review. The address is pathreview@health.gov.au. A page was placed onto the Department of Health and Aged Care website that includes background information on the review, details of the process for the review and contract details for the review.

In addition, the Chair of the steering committee sought the consent of authors of submissions for their submissions to be made available on the Department of Health and Aged Care internet site. In response, only nine authors refused their consent. The remaining submissions are available for viewing on the internet site developed for this review.

Review progress

The review is in the process of preparing a draft report and was expected to report by the end of 2000.

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

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

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

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

Review progress

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

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

The principal objects of the Proceeds of Crime Act are:

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

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

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

Additional objects of this Act include:

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

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

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

The Attorney-General tabled the report of the Australian Law Reform Commission *Confiscation that Counts* on 16 June 1999. The Commission has been unable to complete the national competition principles review and recommended that a working group be established to complete aspects of the Commission's review and examine certain matters.

Review progress

A working group was established in February 2000 (in conjunction with the NCP review of the *Financial Transaction Reports Act* and Regulations) and will finalise its report in 2000-01.

1.2.2.4 Reviews not commenced

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

The *Dairy Produce Act 1986* specifies the objectives, functions and administrative requirements for the Australian Dairy Corporation (ADC), and provides for the operation of the Commonwealth's Domestic Market Support scheme.

The review of the *Dairy Produce Act 1986* was scheduled to be undertaken by the Productivity Commission in 1998-99 with the terms of reference cleared with the ORR in December 1998.

However, against the background of the significant deregulation of the dairy industry in July 2000 (including the cessation of the Commonwealth Domestic Market Support scheme) and the further commitment of the Australian Dairy Industry Council and the industry to propose to Government a revised structure of industry support services post deregulation, the Government has agreed to defer this review.

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

The Department of Defence has conducted an internal review of this legislation. Confirmation regarding its consistency with NCP legislation review requirements is being assessed.

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

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

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

In December 1997, the Government decided to review the *Navigation Act* in two stages. The first stage considered repeal of matters that impede shipping reform or are inconsistent with the concept of company employment. This review stage was completed in 1998 and resulted in the *Navigation Amendment (Employment of Seafarers) Bill 1998*, which was introduced into Parliament on 25 June 1998. On 8 March 2000 the Senate proposed significant amendments to the Bill. The Government has not yet indicated its response to the proposed amendments.

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 and the Australian Maritime Safety Authority. The review team operated under the guidance of an independent Steering Group which provided direction to the review team and acted as an external reference for the conduct of the review, ensuring that it was strategic and reflected as broadly as possible the views of stakeholders.

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

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 Department of Transport and Regional Services website.

Government response

The Government is yet to respond to the recommendations. Given the broad range of matters addressed within the legislation, the Minister for Transport and Regional Services and the Minister for Financial Services and Regulation have agreed to the development of a whole of government response, which will commence during 2000-01.

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

This review had not commenced by 30 June 2000.

1.2.3 Legislation scheduled for review in 1997-98 — Reform not finalised by 30 June 1999

1.2.3.1 Reviews completed and reform outcomes announced

Affirmative Action (Equal Employment Opportunity for Women) Act 1986
(Department of Employment, Workplace Relations and Small Business)

The review of the *Affirmative Action (Equal Employment Opportunity for Women) Act 1986* commenced in December 1997 and was conducted by a five member independent committee.

Review progress

The review report *Unfinished Business: Equity for Women in Australian Workplaces* was presented to the then Minister for Workplace Relations and Small Business on 2 July 1998.

Government response

The Government announced its response to the review on 16 December 1998, endorsing its main recommendations. Key changes to be implemented include the establishment of an Advisory Board and the introduction of a simpler reporting system to reduce the paperwork burden on business. Of those recommendations that were rejected, none were considered to be pro-competitive.

To implement the endorsed recommendations from the report the revised and renamed *Equal Employment Opportunity for Women in the Workplace Act 1999* came into effect from 1 January 2000.

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

The *Imported Food Control Act 1992* and its associated regulations comprise the legislation that enables AQIS to monitor and inspect imported foods. The legislation provides that the requirements with

which imports must comply are those contained in the Food Standards Code, which was developed by ANZFA.

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

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

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

Review progress

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

The recommendations were:

Recommendation 1

The Review Committee recommends that the Act be amended in order to more clearly state its objectives. The following should be considered:

- The objective of the Imported Food Control Act is to provide for the compliance of imported food with the Australian public health and food standards.

Recommendation 2

The Review Committee recommends that a new combined *surveillance* category be established in legislation for all food other than *risk* categorised foods.

Recommendation 3

The Review Committee recommends that:

- assessment be undertaken by AQIS, in consultation with stakeholders, to determine appropriate inspection levels and strategies for *risk* and *surveillance* foods to achieve the objectives of the Act; and

- AQIS consult with stakeholders to develop and implement an assurance regime that is based on individual and collective performance in the imported food industry.

Recommendation 4

The Review Committee recommends that:

- inspection rates not be detailed in the legislation; and

- legislation specify the factors to be taken into account when setting inspection strategies and rates.

Recommendation 5

The Review Committee recommends that the legislation includes provision for imported food to be tested specifically for the purpose of

policy development by ANZFA and AQIS, this testing, is now, to be funded by the government.

Recommendation 6

The Review Committee recommends that AQIS investigate the use of the tariff code system with a view to achieving more focussed referral of imported food.

Recommendation 7

The Review Committee recommends that AQIS and ANZFA allocate adequate resources to ensure operational effectiveness of the Imported Food Inspection Program.

Recommendation 8

The Review Committee recommends that suitably accredited laboratories be permitted to analyse imported food samples for both risk and surveillance categories of food.

Recommendation 9

The Review Committee recommends that AQIS provide notification of results and releases to importers food samples for both risk and surveillance categories of food.

Recommendation 10

The Review Committee recommends that AQIS facilitate the development and implementation of a system to verify the validity and accuracy of test results provided by laboratories.

Recommendation 11

The Review Committee recommends that:

- the legislation specify that labelling conform to Australian requirements at the time of inspection or prior to the product leaving the importer's premises (whichever comes first);

- the legislation specify that failures for labelling should be recorded and actioned against the importer, rather than the producer;

- the use of Holding Orders against producers for minor labelling failures be discontinued; and

- AQIS, in consultation with relevant agencies and industry, develop a system to verify labelling compliance of imported foods, post border.

Recommendation 12

The Review Committee recommends that AQIS continue the current policy of release on sampling for non-*risk* categorised foods.

Recommendation 13

The Review Committee recommends that legislation be amended to permit AQIS to expand the use of certification agreements with other countries' food inspection authorities and that it build more rigour into the present certification system, by provision for:

- review of agreements every three years;

- linking on-site audits to the country's compliance history;

- improved flexibility in relation to inspection rates, including removing them from the legislation (as in Recommendation 4); and

- adoption of an appropriate charging structure to minimise cross-subsidisation, while encouraging uptake of certification.

Recommendation 14

The Review Committee recommends that:

- legislation be amended to clearly allow AQIS to enter into compliance agreements with importers based on approved quality assurance-type arrangements;

- AQIS develop a compliance agreement option that includes specifications for importers, and auditing functions consistent with other inspection systems' functions conducted by AQIS;

- the compliance agreement option has the ability to cover the entire production chain and, where appropriate, the transport chain; and

- overseas suppliers be encouraged to enter into approved quality assurance arrangements with AQIS by permitting these arrangements, where appropriate, to be sourced from the importer's own QA systems.

Recommendation 15

The Review Committee recommends that AQIS investigate and institute changes to AIMS that would ensure effective administration of IFIP, including:

- databases that are accurate;
- reporting modules which provide information relevant to management requirements;
- reporting modules with improved flexibility to meet the need for queries and for changes to requirements; and
- a system which provides information to support field activities.

Recommendation 16

The Review Committee recommends that AQIS define, develop and use performance indicators to ensure efficient and effective program delivery.

Recommendation 17

The Review Committee recommends that a competency-based, comprehensive training program, coordinated by a National IFIP Training Officer, be developed and delivered to all officers undertaking IFIP inspections.

Recommendation 18

The Review Committee recommends that a comprehensive review of all regional IFIP operations be undertaken as soon as practicable to identify and rectify present inconsistencies while the training package is being developed, and the monitoring of the quality of service should be an on-going function.

Recommendation 19

The Review Committee recommends that:

- legislative sanctions should be reviewed for effectiveness, appropriateness and conformity with the *Criminal Code Act 1995*;
- the size of the penalty be struck with reference to analogous legislation (for example, State Food Acts, *Quarantine Act 1908* etc), via the normal process of consultation with the drafters and the relevant areas in Attorney-General's;
- appropriate sanctions be developed with the introduction and extension of certification and approved quality assurance arrangements; and
- legislative sanctions have a proper legislative basis and suitable avenues of appeal and redress, and that they are transparent, and imposed in an accountable manner.

Recommendation 20

The Review Committee recommends that a formal Memorandum of Understanding or service level agreement with the Australian Customs Service be established for imported foods.

Recommendation 21

The Review Committee recommends that AQIS, together with ANZFA, reform the current consultative committee for the imported food program with a view to making it consistent with the consultative arrangements for its other programs, ensuring shared responsibility, transparency in decision making, broad based representation and full consultation among stakeholders.

Recommendation 22

The Review Committee recommends that AQIS develop and implement a communications strategy that:

- provides all stakeholders with timely and detailed information;

- provides transparency in imported foods policy and operations; and that AQIS, in cooperation with other agencies:

- develop an overview booklet for food importers containing details of all relevant agencies and their requirements; and

- establish an inter-agency "shopfront" facility to disseminate information about the responsibilities of the various government agencies involved in food importing.

Recommendation 23

The Review Committee recommends that, in line with considerations descried in this Report, the *Imported Food Control Act 1992* be retained, with:

- timely amendment of legislation consistent with Recommendations 1, 2, 4, 5, 11, 13, 14 and 19 and;

- enhancement of administrative processes supporting the legislation consistent with the other recommendations in this Report.

Government response

The Government response was issued on 29 June 2000, which accepted all of the recommendations.

Recommendations requiring amendment to the Act are being prepared for introduction to Parliament, and amendments to subordinate legislation are still under consideration.

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

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

The review commenced in December 1997. It was undertaken by a taskforce of officials, headed by the Federal Office of Road Safety with representatives from the Department of Industry, Science and Resources,

the Australian Customs Service, the National Road Transport Commission and Environment Australia.

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

Review progress

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

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

Government response

The Government provided its response to the final report on 8 May 2000. In a joint media release issued by the Minister for Transport and Regional Services, the Hon John Anderson MP, and the Minister for Industry, Science and Resources, Senator the Hon Nick Minchin, the following new arrangements were announced for imported used vehicles:

Introduction of a new Specialist and Enthusiast Vehicle Scheme (SEVS) with the following main criteria to determine the eligibility of a vehicle model:

- not marketed in full volume;
- supplied to world market for at least 18 months;

- withdrawn from local market for at least 12 months; and
- meets at least two of four specialist and enthusiast criteria (that is, appearance, performance, featured in specialist publications, unusual design features);
- four wheel drives with single-cab and open work-tray;
- diesel/turbo variants of full volume models will no longer qualify for special treatment but will be considered against the criteria for SEVS;
- replace type (bulk) approval of Australian Design Rules compliance with vehicle-by-vehicle approval conducted by registered workshops; or
- increase the annual cap per approval holder from 25 to 100 used passenger motor vehicles, in line with the cap for four wheel drives.

Transitional arrangements:

- two-year sunset on existing low volume scheme approvals; and
- new SEVS criteria to apply immediately to new applications.

Non-LVS categories:

- abolish complete vehicles for dismantling — importation of used vehicle components will still be allowed;
- extend personal import eligibility from 90 days ownership and use to 12 months;
- other measures aimed at improving the administration of used vehicle imports and reducing malpractices in the trade (for example, full-cost recovery, consumer awareness);

The following amendments to the Regulations in relation to the non-LVS were gazetted on 25 July 2000:

- to import a non standard road vehicle, the period of continuous ownership and use will be 12 months (Regulation 9D); and

- approvals to import road vehicles for dismantling has been discontinued (Regulation 9H).

Drafting instructions for other legislative changes are currently being prepared.

1.2.3.2 Reviews completed, recommendations under consideration

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

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

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

Review progress

The report of the review was made public on 16 June 1999. The recommendations made in the report are:

Recommendation 1

Sections 154 to 161L of the *Customs Act 1901* should be repealed and redrafted in a clear, straightforward and logically organised 'plain English' format that incorporates the language and terminology of the World Trade Organisation Agreement on Customs Valuation as far as possible and is consistent with that Agreement.

Recommendation 2

The redrafted legislation should contain clear statements of its purpose and objectives including primary purpose of specifying the methods for determining the value of all imported goods.

Recommendation 3

The proposed new legislation should make clear the statutory basis on which importers are required to self-assess the value of imported goods.

Recommendation 4

The legislation or its supporting material should clearly explain the principles which underpin Australia's import valuation procedures and the intent behind each of the provisions in the legislation.

Recommendation 5

The Australian Customs Service should examine the feasibility of adopting a system of public valuation rulings.

Recommendation 6

The Australian Customs Service should introduce, at the same time as the new legislation comes into effect, a program to provide public information about the requirements for valuation of imports under the proposed new legislation.

Government response

Customs has consulted widely with other government agencies and there is general support for the recommendations. The support of relevant Ministers is currently being sought at which time the Minister for Justice and Customs will write to the Prime Minister seeking approval to give effect to the recommendations,

The proposed government response to the review is under preparation and is expected to be announced in the first half of 2001.

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, Training and Youth Affairs)

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

Review progress

The deadline for the provision of the final report was extended to March 1998, with the review committee reporting to the Minister for Employment, Education, Training and Youth Affairs on 17 April 1998.

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

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

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

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

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

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

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

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

Review progress

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

Government response

The Government response was expected in the second half of 2000.

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

Sub-sections 51(2) and 51(3) of the *Trade Practices Act 1974* (TPA) provide exemptions for a variety of activities concerning intellectual property rights, employment regulations, export arrangements and approved standards for many of the competition laws contained within Part IV of the Act. This Part prohibits a number of anti-competitive trade practices including: anti-competitive arrangements and exclusionary provisions; secondary boycotts; misuse of market power; exclusive dealing; resale

price maintenance and mergers that would have the effect or likely effect of substantially lessening competition in the substantial market.

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

Review progress

The review report was released on 21 June 1999.

Government response

A response to the review of section 51(2) of the TPA will be released in due course. The *Review of Intellectual Property Legislation* (see page 52) which was conducted by the Intellectual Property and Competition Review Committee and released in December 2000 also examined section 51(3). A response to this report is currently being formulated.

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

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

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

Fisheries, Thursday Island; Mr Russell Reynolds, Queensland Department of Primary Industries and Mr Trevor Dann, Queensland Department of Primary Industries.

Review progress

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

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

The PZJA is waiting to hear from the Torres Strait Fisheries Management Committee before deciding whether to accept or reject the findings of the review.

1.2.3.3 Reviews commenced but not completed

Defence Housing Authority Act 1987
(Department of Defence)

The terms of reference for this review were agreed to in June 1998. The Department is seeking advice on whether there are grounds for the review to be deleted.

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

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

Review progress

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

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

After consultation with industry groups, the review was called off. Legislation to repeal the Act will be introduced into Parliament in 2000-01.

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

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

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

Review progress

The review was originally scheduled for completion by December 1998. Following a delay partly due to an amalgamation of legislation, the committee of officials began progressing the review in 1999. To ensure full consultation, a second round of public consultation was initiated in September 1999.

1.2.3.4 Reviews not commenced

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

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

The making of Codes, formally undertaken through this Act, will take place through the process established by the *Australian Radiation Protection and Nuclear Safety Act 1998*. In addition, radiation protection legislation generally will be subject to a national legislation review in 2000. (*see* page 112).

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

The review of this Act was previously deferred because it was expected to be repealed in the consequential amendments included in the proposed *Financial Services Reform Act*.

An exposure draft of the Bill was released for public comment in February 2000 for a three-month public exposure period. The draft bill included provisions, to be inserted in the Corporations Law, which will address the licensing of all financial service providers (including insurance intermediaries, stockbrokers and futures brokers) in place of the separate licensing regimes which now exist.

After consideration of the submissions received during this period, the Bill was to have been introduced in the Winter 2000 sittings of Parliament. However, introduction was deferred following the High Court's decision in a matter of *Hughes* which cast doubt on the legislative structure of the national companies and securities scheme (including Corporations Law).

The Commonwealth and the State Ministers reached in principle agreement on a referral of power which will address the issues arising from *Hughes* in August 2000. Further detailed work on the referral legislation is now taking place.

Although the *Financial Services Reform Act* will not now commence on 1 January 2001, as previously expected, these reforms will be progressed once the Corporations Law's new constitutional underpinning is in place.

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

The legislation is subject to a review by the Senate Economics Reference Committee. Consideration of further review of this legislation has been postponed until after the Senate Committee reports.

Spectrum Management Agency (SMA) — Review of SMA's market-based reforms and activities
(Department of Communications, Information Technology and the Arts)

The Department of Communications, Information Technology and the Arts, in consultation with the Australian Communications Authority, the Department of the Treasury and the Office of Regulation Review, have developed draft terms of reference for the review.

It is expected that the review will commence in 2001.

1.2.4 Legislation scheduled for review in 1996 and 1996-97 — Reform not finalised by 30 June 1999

1.2.4.1 Reviews completed and reform outcomes announced

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

The review of the *Australian Postal Corporation Act 1989* commenced in May 1997. It was conducted by the National Competition Council (NCC)[17].

Government response

In April 2000, the Government introduced legislation into the House of Representatives which will implement its response to this review. The legislation provides for:

(a) the reduction of Australia Post's monopoly by:

  i) reducing the weight threshold to competition from 250 grams to 50 grams and the price threshold from four times the standard letter rate to one times the standard letter rate; and

  ii) removing the monopoly on the carriage and delivery of incoming international letters.

(b) the introduction of a postal access regime to facilitate the development of competition in the postal market by allowing competitors of Australia Post to interconnect with its network.

  i) the access regime is structurally similar to the infrastructure access regime in Part IIIA of the *Trade Practices Act 1974*. It also contains elements from the telecommunications

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

record-keeping rules in Part XIB of the Act, and the telecommunications access regime in Part XIC;

ii) like Part XIC of the *Trade Practices Act*, the postal access regime is designed to assist competitors to gain access to services supplied by a strong market incumbent. It is also designed to encourage commercial negotiation between access providers and seekers but allows for intervention by the Australian Competition and Consumer Commission (ACCC) if necessary;

iii) access providers are encouraged by the provisions in the Bill to make undertakings about the types of services they may make available for access and the terms and conditions of access they will provide. However, the Bill also provides the ACCC with the power to declare access to a postal service and to arbitrate the terms and conditions of access to a declared service, if agreement cannot be reached between the parties concerned;

iv) the Bill proposes that the Minister will be required to declare a number of services at the commencement of the regime. These are Australia Post's bulk mail services and post office boxes. There is currently provision for access to Australia Post's bulk mail services through the bulk interconnection regime set out in the current legislation. The NCC recommended access to post office boxes because physical access by competitors is unavailable; and

v) the Bill puts in place arrangements to assure competitors that Australia Post is not cross-subsidising from the monopoly reserved services to the services it provides in competition with other postal operators. Under these arrangements, the ACCC will be able to make record-keeping rules to require providers of postal services to maintain records in a specified form.

(c) conversion to a Corporations Law company;

i) the Bill also proposes to convert Australia Post from a statutory corporation established under the *Australian Postal Corporation Act* to a public company under the Corporations Law; and

ii) this is consistent with Government policy that all Government Business Enterprises competing with other companies should be subject to the same laws.

Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 & Regulations
(Department of Foreign Affairs)

The objective of the legislation is to impose a charge on commercial uranium producers in Australia to recover some of the costs of the Australian Safeguards Office (now known as the Australian Safeguards and Non-Proliferation Office) in undertaking nuclear safeguards and physical protection activities.

The review panel comprised a committee of officials convened by the Department of Foreign Affairs and Trade. The panel comprised Mr Les Luck (Chairman), Assistant Secretary, Nuclear Policy Branch, Department of Foreign Affairs and Trade; Mr Mark McGovern, Assistant Director, Primary Industries and Energy Section, Department of Finance; Mr Murray Fearn, Acting Director, Uranium and Nuclear Section, Department of Primary Industries and Energy, Dr Geoff Shaw, Executive Officer, Australian Safeguards Office; and Ms Margaret Durnan (Secretary), Executive Officer, Nuclear Safeguards Section, Department of Foreign Affairs and Trade.

Review progress

The review was completed in June 1997. The review report recommendations were:

Recommendation 1

The Committee recommends that a charge for the Australian Safeguards Office's (ASO) safeguards and physical protection activities in relation to uranium produced in Australia be retained.

Recommendation 2

The Committee recommends that a charge for ASO's safeguards and physical protection activities be determined having regard to the costs of ASO's activities directly relevant to uranium production in Australia and the presence of Australian Obligated Nuclear Material (AONM) in the international fuel cycle.

Recommendation 3

The Committee recommends that a charge have regard to future cost liabilities for safeguards and physical protection activities for AONM, whether in Australia or elsewhere.

Recommendation 4

The Committee recommends that a charge for ASO's current and future safeguards and physical protection activities be collected at the time of uranium production.

Recommendation 5

The Committee recommends the introduction of a consultative mechanism with producers in relation to ASO's safeguards and physical protection activities, while noting that such consultations will need to have regard to the requirements of the national safeguards policy.

Recommendation 6

The Committee recommends that the charge be restructured to remove the disincentive effect to the development of new uranium mines, but that the minimum threshold for operation of the charge remain at its current level in recognition of the ongoing costs to be incurred by ASO in relation to any uranium produced.

Recommendation 7

The Committee recommends that the charge be restructured to removed the present disparity in the effect of the charge between smaller and larger producers.

Recommendation 8

The Committee recommends that the charge should continue to be established by legislation.

Recommendation 9

The Committee recommends that the current 'flat fee' charge be replaced by a piece rate 'safeguards fee' per kg U produced.

Recommendation 10

The Committee recommends that a 'safeguards fee' be calculated according to the methodology outlined in paragraphs 4.3 — 4.10, which methodology results in an indicative figure of 11.5980 cents per kg U produced in respect of 1995-96 uranium production and ASO cost figures.

Recommendation 11

The Committee recommends that a five-year 'rolling average' of the amounts calculated in accordance with Recommendation 10 be used to determine the actual level of a 'safeguards fee' per kg U produced.

Recommendation 12

The Committee recommends that, should it be decided to implement a 'safeguards fee' per kg U produced as per Recommendations 10 and 11, legal advice be sought on the necessity for any implementing legislative amendments.

Recommendation 13

The Committee recommends that s69A(2)(a) of the Safeguards Act be repealed.

Recommendation 14

The Committee recommends that producers as at 1 November of each year be liable to pay on 1 December a 'safeguards fee' per kg U produced in relation to uranium production during the previous financial year.

Government response

The Government accepted all but one of the recommendations, in particular adopting the recommendation to introduce a 'safeguards fee' for every kilogram of uranium produced to replace the previous flat rate charge. The Government announced that it saw 'no need at this time to repeal or amend section 69A(2)(a) of the Act, which establishes a maximum charge of $500,000 per year per producer'.

Implementation of the measures adopted to give effect to this response is by means of changes made annually to the Nuclear Non-Proliferation (Safeguards) Regulations 1987. Since the review, the fee set each year has been on a per kilogram basis using methodology recommended by the review.

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

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

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

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

Review progress

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

- remove the obligation to register certain ships;
- restructure the Australian Register of Ships into four parts;

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

Government response

The Government accepted all of the recommendations. Policy approval to amend the *Shipping Registration Act* to implement recommendations was received in 1998. Progress is being made in implementing legislative amendments.

Tradesmen's Rights Regulation Act 1946 (Department of Employment, Workplace Relations and Small Business)

The review of the *Tradesmen's Rights Regulation Act 1946* (TRR Act) commenced in December 1997.

It was undertaken by a committee of officials comprising representatives of the Department of Employment, Workplace Relations and Small Business (chair), the Department of Immigration and Multicultural Affairs, the Department of Finance and Administration, the National Office of Overseas Skills Recognition in the Department of Education, Training and Youth Affairs and three independent members of the community.

Review progress

The review was completed on 18 November 1998, with a report provided to the Minister for Employment, Workplace Relations and Small Business on 9 December 1998. The report was publicly released on 24 March 1999.

The review recommended that although the Act did not entail costs for business or restrict competition:

- the TRR Act should be repealed and the Commonwealth vacate the domestic skills recognition field and all domestic recognition be undertaken on a free competition basis by Registered Training Organisations (RTOs) established under the Australian Recognition Framework; and

- the Commonwealth should similarly vacate the migration skills assessment field, but this outcome should be phased in through an interim approach of establishing a managing agent which would coordinate appropriate RTOs to undertake assessments.

Government response

The Government accepted the recommendations of the review report.

The Department is continuing consultations with industry about the new arrangements for domestic skills recognition and migration skills assessment.

1.2.4.2 Reviews completed, recommendations under consideration

Aboriginal Land Rights (Northern Territory) Act 1976 (Department of Prime Minister and Cabinet)

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

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

Review progress

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

Recommendation 1

The right of refusal should be maintained.

Recommendation 2

Restrictions on the content of agreements should be removed, leaving this to be governed by general commercial law.

Recommendation 3

Aboriginal Land Councils and the Northern Territory Department of Mines and Energy (DME) should jointly draft, publish and regularly update a detailed manual for applicants for Exploration Licences on Aboriginal land, including specification of topics usually subject to negotiation and an indication of outcomes likely to be expected by traditional owners.

Recommendation 4

A representative of DME should be able to attend meetings, at the invitation of the applicant or the Aboriginal Land Council, as an observer and at the expense of DME or the applicant, on the same conditions as the representative of the Minister for Aboriginal and Torres Strait Islander Affairs.

Recommendation 5

Consent to negotiate should expire on refusal of an Exploration Licence Application, but the applicant may be given permission to re-apply at the Northern Territory Minister's discretion.

Recommendation 6

Where, following a refusal, there has been a genuine change of applicant, and DME and the Aboriginal Land Council (acting in the interests of the traditional owners) are agreed that negotiation should proceed, the Northern Territory Minister should have the power to issue consent to negotiate at any time.

Recommendation 7

Aboriginal Land Councils should budget and account for mining negotiations and mining contract administration as a discrete cost centre, covering:

(a) all expenditures on mining negotiation and contract administration;

(b) budgetary allocation from their own funds; and

(c) all industry contributions, which are to be treated as additional to (b).

Industry contributions will include:

(a) contributions from applicants;

(b) contributions from industry bodies or government organisations such as DME and the Department of Industry, Science and Resources; and

(c) earnings from consultancies etc. undertaken by the mining personnel of the Aboriginal Land Council.

Aboriginal Land Councils with less than six outstanding Exploration Licence Applications, and any other determined by the Minister, should be exempt from this requirement.

Recommendation 8

If an Aboriginal Land Council believes that an applicant is postponing negotiation to an extent which threatens the achievement of negotiation deadlines, it should inform DME, with reasons. DME should then consult with the applicant, and if it comes to the same view as the Land

Council, and the Minister agrees, it should have power to withdraw consent to negotiate.

Recommendation 9

Deadlines should be expressed in terms of consultation seasons, that is, clear periods including (a) an initial period of 3 months (b) 14 months beginning after the end of period (a) and including only time between April 15 and November 14 each year (or otherwise as determined for particular regions by the Aboriginal Land Council with the consent of the Minister), plus a final period of 2 months. The existing provisions for the Minister to extend the deadlines should remain.

Recommendation 10

The existing deeming provision when an Aboriginal Land Council and applicant exceed the negotiation period should be replaced by a deemed withdrawal of consent to negotiation.

Recommendation 11

Aboriginal Land Councils should have power to delegate approval of agreements to their executive or regional committees. The existing requirement of final approval by the Minister should remain.

Recommendation 12

Aboriginal Land Councils should be able to set mandatory user charges, to recover all costs directly attributable to each particular mining negotiation. Standard charges should be published, but should be negotiable with applicants. Where applicants believe that charges are excessive, they should have the right of appeal under the Exploration Licence conciliation and arbitration provisions of the Act.

Government response

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

1.2.4.3 Reviews commenced but not completed

Bills of Exchange Act 1909
(Department of the Treasury)

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

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

Review progress

A final report is being prepared by the working group.

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

The review of the *Radiocommunications Act 1992* commenced in 1997. However, the national competition principles aspects of the review were not completed. Accordingly, The Department of Communications, Information Technology and the Arts, in consultation with the Australian Communications Authority, the Department of the Treasury and the Office of Regulation Review, have developed draft terms of reference for the review.

It is expected that the review will commence in 2001.

1.2.4.4 Reviews not commenced

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

This review had not commenced by 30 June 2000.

Customs has administrative responsibility for the Commerce (Imports) Regulations and Customs Prohibited Imports Regulations. The Regulations reflect the policy responsibilities of a number of agencies.

Customs has initiated discussions with these agencies aimed at commencing a review process. Discussions involved officers from agencies such as Attorney-General's Department, Department of Industry, Science and Resources, the Department of the Treasury, IP Australia and the Australian Competition and Consumer Commission.

1.3 Legislation subject to national review

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

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

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

The National Competition Policy Review (NCPR) covers legislation that created the National Registration Scheme for Agriculture 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 are conducting their own review of their control of use legislation to be aggregated with the NCPR.

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

Review progress

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

On 3 March 1999, The Standing Committee on Agricultural Resource Management (SCARM) publicly released the NCPR report and established a jurisdictional Signatories (to the National Registration

Scheme for Agricultural and Veterinary Chemicals) Working Group (SWG) to prepare an inter-governmental response to the report's recommendations.

Government response

The SWG completed a draft inter-governmental response to the review in January 2000 and the response has been cleared by CRR.

A number of the NCPR recommendations have been progressed. An interjurisdictional task force was established by SCRAM to examine how best to regulate low risk chemicals in response to NCPR recommendations on that issue. Based on the deliberations of the task force, drafting instructions have been prepared to amend the agvet chemical legislation accordingly.

Working groups have been established to further examine and progress the NCPR recommendations relating to manufacturer licensing, cost recovery and the use of alternative assessment providers. Reports of these working groups are expected to be completed by December 2000.

In addition to these groups, the Control of Use Taskforce was established by ARMCANZ to further examine the NCPR recommendations covering matters relating to off-label chemical use, veterinary surgeons exemptions and control of use licensing. The Taskforce, comprising Commonwealth, State and Territory representatives, is giving consideration to the development of a nationally consistent approach to off-label chemical use.

Review of the Mutual Recognition Agreement and the Mutual Recognition (Commonwealth) Act 1992 (Department of the Prime Minister and Cabinet, Department of Education, Training and Youth Affairs, Department of Industry, Science 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 MRA required that it (the MRA) be reviewed in its fifth year of operation; that is, between 1 March 1997 and 1 March 1998. In addition, several jurisdictions were obliged to conduct NCP legislation reviews of their mutual recognition legislation.

As the MRA is a national scheme, all jurisdictions agreed to a national review of the MRA and to implementing legislation which would incorporate outcomes of both the MRA and NCP reviews. Jurisdictions agreed that the review would be conducted by CRR, with representatives from Queensland (chair), the Commonwealth, New South Wales and Western Australia.

Review progress

The review was conducted between October 1997 and June 1998. The report is available on the Internet at www.pmc.gov.au. The review found that the scheme is generally working well. However, it made thirty recommendations addressing the operation of different aspects of the MRA. Significantly, it recommended that jurisdictions endorse the continued operation of the MRA.

Government response

Jurisdictions generally support the review's recommendations, except Queensland in relation to recommendations six and nine, on which it has reserved its position. Queensland also has concerns about several other recommendations. Victoria has concerns about recommendations nine, twelve and twenty-four.

To resolve outstanding issues and progress the review, jurisdictions agreed that CRR would establish a working group to:

- further consider the recommendations that jurisdictions have concerns about;
- consider issues that the report recommended that CRR should consider further; and
- implement issues relating to the recommendations.

CRR established this working group in May 1999. It will report back to CRR as particular matters are resolved. No matters have yet been resolved.

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

In November 1999 the Australian and New Zealand Minerals and Energy Council (ANZMEC) commissioned a national review of the Commonwealth, State and Northern Territory's Petroleum (Submerged Lands) legislation against NCP principles. This legislation governs exploration and development of Australia's offshore petroleum resources.

Review progress

At the ANZMEC Ministerial Council meeting held on 25 August 2000, the Council considered the review reports and resolved to adopt the review recommendations. These contained proposed responses to recommendations put forward in an April 2000 independent consultant's report by ACIL Consulting Pty Ltd.

The main conclusion of the Review Committee could be summarised as a view that the legislation is essentially pro-competitive and, to the extent that there are restrictions on competition (for example, in relation to safety, the environment, resource management or other issues), these are appropriate given the net benefits to the community.

The outcomes of the review will now be implemented. The final report was made public in March 2001.

Terms of reference

1. The Australian and New Zealand Minerals and Energy Council refers the nation's Petroleum (Submerged Lands) legislation to the Review Committee for inquiry and report by 30 June 2000.[18]

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

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

- *Petroleum (Submerged Lands) Act 1967 (Commonwealth)*;
- *Petroleum (Submerged Lands) Act 1982 (New South Wales)*;
- *Petroleum (Submerged Lands) Act 1981 (Northern Territory)*;
- *Petroleum (Submerged Lands) Act 1982 (Queensland)*;
- *Petroleum (Submerged Lands) Act 1982 (South Australia)*;
- *Petroleum (Submerged Lands) Act 1982 (Tasmania)*;
- *Petroleum (Submerged Lands) Act 1982 (Victoria)*;
- *Petroleum (Submerged Lands) Act 1982 (Western Australia)*;
- *Petroleum (Submerged Lands) (Fees) Act 1994 (Commonwealth)*;
- *Petroleum (Submerged Lands) (Registration Fees) Act 1967 (Commonwealth)*; and
- State and Northern Territory counterparts to the above two Commonwealth Fees Acts and, for all the above Acts, associated Regulations, Directions and Guidelines.

3. The Review Committee shall:

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

(b) clarify the objectives of the legislation;

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

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

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

i. the restrictions referred to in (d);

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

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

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

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

(a) the principle that regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation can only be achieved by restricting competition;

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

(c) where relevant, effects on the environment, welfare and equity, occupational health and safety, economic and regional development, the interests of Australian consumers, the competitiveness of business, efficient resource allocation and other material matters; and

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

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

9 November 1999

1.3.1 Other National Reviews with Commonwealth involvement

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

Drugs, poisons and controlled substances legislation

The State, Territory and Commonwealth Governments have 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 is undertaking the review, with advice from a steering committee representing all jurisdictions.

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

Submissions against the terms of reference were invited and these informed the development of the Options Paper which was released for comment in February 2000. A Draft Report was released in September 2000 and provided a further opportunity for interested parties to comment.

Review progress

A final report was completed in January 2001 and a group was established by the Australian Health Ministers Conference to prepare a Government response after consulting with CRR.

Food acts

On behalf of the State and Territory Health Departments, the Australia New Zealand Food Authority (ANZFA) coordinated a NCP review of the Food Acts of each State and Territory, and the new food laws to be implemented by all Australian jurisdictions.

The Food Regulation Review Committee was chaired by Dr Blair, and comprised representatives of industry, consumers and government.

Review progress

The final report of the Food Regulation Review Committee, *Food: A Growth Industry*, was provided to Government in August 1998, and is publicly available. The report recommends major legislative, procedural and structural reforms intended to produce a more efficient and effective food regulatory system, covering primary production, processing, retailing and catering, with improved consumer safety and a reduced regulatory burden on industry.

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

A national review to examine State and Territory legislation relating to pharmacy ownership and registration of pharmacists, together with Commonwealth legislation relating to regulation of the location of premises for pharmacists approved to supply pharmaceutical benefits, was formally agreed to by all governments on 1 May 1998.

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

All States and Territories require registration of pharmacists. Legislation covers requirements regarding initial registration of both Australian-trained pharmacists and overseas-trained pharmacists,

renewal of registration, removal of registration, complaints against regulated pharmacists and disciplinary processes.

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

The Review commenced in June 1999. The review was undertaken by an independent Chair, Mr Warwick Wilkinson AM, with advice from a steering committee with nominees of all jurisdictions.

Submissions against the terms of reference were invited, and over 100 were received. These informed the development of a preliminary report for public comment, as well as the final report presented to CoAG.

Review progress

In February 2000, the review released its final report, which made the following recommendations:

Ownership of Pharmacies

Recommendation 1

The Review recommends that:

(a) legislative restrictions on who may own and operate community pharmacies are retained; and

(b) with existing exceptions, the ownership and control of community pharmacies continue to be confined to registered pharmacists.

Recommendation 2

The Review recommends that:

(a) any State or Territory's residential requirements for pharmacy ownership are removed; and

(b) any State or Territory's requirements that a pharmacist be registered in that jurisdiction to own a pharmacy are retained,

pending any consistent national arrangements that may be adopted.

Recommendation 3

The Review recommends that:

(a) pharmacy ownership structures permitted by various State and Territory *Pharmacy Acts* be retained as being consistent with the defined principle of pharmacist ownership and effective control of pharmacy businesses;

(b) *Pharmacy Acts* recognise, in addition to sole trading pharmacists and pharmacist partnerships, corporations with shareholders who are:

i. all registered pharmacists; and
ii. registered pharmacists and prescribed relatives of those pharmacists; and

(c) due to the risk of conflicts of interest of shareholders, and the difficulties in determining the extent to which minority shareholdings may compromise pharmacist control of a pharmacy, operating companies with minority shareholdings held by non-pharmacists are not considered to be appropriate ownership structures for pharmacy businesses.

Recommendation 4

The Review recommends that:

(a) State and Territory restrictions on the number of pharmacies that a person may own, or in which they may have an interest, are lifted;

(b) the effects of lifting the restrictions be monitored to ensure that they do not lead to undue market dominance or other inappropriate market behaviour; and

(c) legislative requirements that the operations of any pharmacy must be in charge, or under the direct personal supervision, of a registered pharmacist are retained.

Recommendation 5

The Review recommends that:

(a) friendly societies may continue to operate pharmacies, but that:

   i. regulations specific to the establishment and operation of pharmacies by friendly societies, that do not apply to other pharmacies and classes of proprietors, should be removed; and
   ii. any friendly society that did not operate pharmacies in a jurisdiction on 1 July 1999 or any other prescribed date should not own, establish, or operate a pharmacy in that jurisdiction in future, unless it is an entity resulting from an amalgamation of two or more friendly societies operating a pharmacy at that date;

(b) permitted corporately-owned pharmacies continue to be restricted under grandparenting arrangements where these apply;

(c) the relative financial and corporate arrangements of pharmacist-owned pharmacies and friendly society pharmacies, as these may affect the competitiveness of these pharmacies with each other, could be referred for definitive advice to the Australian Competition and Consumer Commission (ACCC), or another agency or authority of comparable and appropriate standing; and

(d) the findings of any such inquiry may be taken into account as part of legislative reform processes in this regard.

Recommendation 6

The Review recommends that:

(a) any statutory prohibition on natural persons or bodies corporate, not being a registered pharmacist, or other permitted entity, having a direct proprietary interest in community pharmacies is retained;

(b) 'Proprietary interest' be defined clearly in *Pharmacy Acts* as relating to the direct ownership of, or a partnership, shareholding or directorship in, a pharmacy operating entity;

(c) subject to the proprietor of a pharmacy remaining responsible and accountable for the safe and competent practice of professional services in that pharmacy, provisions in *Pharmacy Acts* relating to:

i. preventing parties other than a registered pharmacist to have a lawfully permitted association with a pharmacy business, but not including a proprietary interest as defined in Recommendation 6(b);
ii. inserting specific terms in commercial documents relating to those businesses;
iii. preventing considerations for third parties based on a pharmacy's turnover or profit;
iv. preventing pharmacies having preferred wholesale suppliers of medicines;
v. otherwise preventing pharmacy proprietors from developing lawful business associations with other parties; and
vi. allowing regulatory authorities to intervene inappropriately in matters of this nature; are removed; and

(d) removed provisions of the types described in Recommendation 6(c) are replaced in each *Pharmacy Act* with a statutory offence, with appropriate and substantial penalties for individuals and corporations, of improper and inappropriate interference with the professional conduct of a pharmacist in the course of his or her practice.

Recommendation 7

The Review recommends that:

(a) legislation requirements for the registration of pharmacy premises be removed provided that:

i. Acts, regulations and related guidelines can continue to require pharmacy proprietors and managers to ensure that their premises are of a minimum standard of fitness for the safe and competent delivery of pharmacy services;
ii. the responsibilities of pharmacy proprietors and managers, and of registered pharmacists, under State and Territory drugs and poisons legislation are not compromised;

iii. Acts or regulations may require the proprietor of a pharmacy to notify a regulatory authority, in writing, of the location or relocation of a pharmacy; and

iv. regulatory authorities, their employees or agents may enter and inspect pharmacy premises to investigate complaints, conduct spot checks, or act on the reasonable suspicion of guidelines being breached; and

(b) regulations requiring the registration of pharmacy businesses by regulatory authorities are removed, given that pharmacists are already registered in each State and Territory, and that business registration is not connected to the safe and competent practice of pharmacy.

Recommendation 8

The Review recommends that Commonwealth, State and Territory governments ensure that legislation and agreements for the delivery of professional pharmacy and health care services negotiated with pharmacy proprietors and their representatives, require:

(a) an acceptable range of services to be provided; and

(b) appropriate quality assurance and professional practice standards to be adopted by community pharmacies covered by the agreements.

Location of Pharmacies

Recommendation 9

The Review recommends that:

(a) some form of restriction on the number of pharmacies as outlets for the Pharmaceutical Benefits Scheme (PBS) is retained;

(b) the parties to the Australian Community Pharmacy Agreement consider, in the interests of greater competition in community pharmacy, a remuneration system for PBS services that restricts the overall number of pharmacies by rewarding more efficient pharmacy businesses and practices, and providing incentives for less efficient pharmacy businesses to merge or close; but

(c) if remuneration arrangements consistent with Recommendation 9(b) are not practical, controls on the number of pharmacies through restricting new pharmacies' eligibility for approval to supply pharmaceutical benefits could be retained but, if so, any 'definite community need' criteria for those approvals should be made more relevant to the needs of underserviced communities, particularly in rural and remote areas.

Recommendation 10

The Review recommends that PBS related restrictions on the relocation of pharmacies from one site to another are phased out.

Recommendation 11

The Review recommends that, consistent with recommendations 9 and 10, the current PBS new pharmacy and relocated pharmacy approval restrictions be reformed and/or phased out from 1 July 2001.

Recommendation 12

The Review recommends that:

(a) legislation to support specific programmes and initiatives to assist the retaining and enhancing of pharmacy services in rural and remote areas is considered to be of a net public benefit;

(b) non-transferable approvals to supply pharmaceutical benefits conferred, in limited circumstances, on a specific rural or remote locality are considered to be a justifiable restriction on competition in the public interest.

Recommendation 13

The Review recommends that, should new pharmacy and relocated pharmacy approval restrictions continue after 1 July 2001, that:

(a) approvals for PBS purposes, of pharmacies located in eligible medical centres, private hospitals and aged care facilities, and intended to serve those facilities, are considered without reference to the distance of a given facility's site from the nearest existing pharmacy; and

(b) measures as proposed in Recommendation 13(a) are incorporated in any transitional or ongoing regulatory measures concerning the approval of new and relocated pharmacies to supply PBS benefits.

Registration of Pharmacies

Recommendation 14

The Review recommends that:

(a) *Pharmacy Acts*, delegated legislation and statutory instruments concentrate on setting out the minimum regulatory requirements for the safe and competent delivery of pharmacy services by, or under the supervision, of pharmacists;

(b) legislation sets out clearly the roles, responsibilities and powers of decision-making, regulatory and reviewing authorities in administering that legislation; and

(c) *Pharmacy Acts* distinguish between the responsibilities of governments to approve and formally set professional practice standards, professional instructions and procedural guidelines, and those of regulatory authorities to implement and enforce those standards, instructions and guidelines.

Recommendation 15

The Review recommends that:

(a) the appointment, composition, functions and charter of regulatory authorities should be set out clearly in legislation and should not unduly restrict or hamper competitive and commercial activity in the pharmacy industry by the way they operate; and

(b) regulatory authorities are appointed, composed and structured so that they are accountable to the community through government, and focus at all times on promoting and safeguarding the interests of the public.

Recommendation 16

The Review recommends that:

(a) pharmacy remains a registrable profession, and that legislation governing registration should be the minimum necessary to protect the public interest by promoting the safe and competent practice of pharmacy;

(b) legislative requirements restricting the practice of pharmacy, with limited exceptions, to registered pharmacists are retained;

(c) legislative limitations on the use of the title 'pharmacist' and other appropriate synonyms for professional purposes are retained;

(d) legislative requirements for a registered pharmacist, to have particular personal qualities, other than appropriate proficiency in written and spoken English, and good character, are removed;

(e) legislative requirements that membership of a professional association or society is necessary for registration as a pharmacist are removed;

(f) legislative requirements specifying qualification, training and professional experience needed for initial registration as a pharmacist are retained; but

(g) States and Territories should move towards replacing qualifications-based criteria with solely competency-based registration requirements if and as appropriate workable assessment mechanisms can be adopted and applied.

Recommendation 17

The Review recommends that:

(a) existing re-registration requirements for pharmacists re-entering the profession following a period out of practice are retained; and

(b) regulation enabling regulatory authorities to impose conditional registration, or supervised or restricted practice prior to

re-registration, for pharmacists returning to practice or constricted in their abilities to practice, are retained.

Recommendation 18

The Review recommends that, within three to five years, States and Territories should implement competency-based mechanisms as part of re-registration processes for all registered pharmacists.

Recommendation 19

The Review recommends that:

(a) complaints and disciplinary processes be set out clearly in *Pharmacy Acts* and delegated legislation;

(b) grounds for the incompetence to practice of, and professional misconduct by a pharmacist, are defined clearly in legislation; and

(c) complaints investigation, disciplinary processes, and penalties imposed by regulatory authorities are accessible, public, transparent and subject to the principles of natural justice and external review.

Recommendation 20

The Review recommends that, in the interests of promoting occupational and commercial mobility, the Commonwealth, States and Territories explore and consider adopting nationally consistent or uniform legislation, or specific legislative provisions, on pharmacy ownership, pharmacy registration and the regulation of pharmacy professional practice.

CoAG referred the report to its Senior Officials for consideration. A working group was established to consider the review report and recommendations, and to advise on appropriate responses.

Review of Radiation Protection Legislation
(Department of the Environment and Heritage)

In December 1998, CoAG's Senior Officials Group agreed that the Commonwealth, States and Territories will undertake a joint NCP review of their radiation protection legislation to be coordinated by the Australian Radiation Protection and Nuclear Safety Agency (ARPANSA).

The steering committee for the review is the National Uniformity Implementation Panel (Radiation Control) (NUIP (RC)), which is a working group under ARPANSA's Radiation Health Committee.

The review commenced on 8 August 2000.

Review progress

An issues paper has been released, the due date for submissions was 30 November 2000.

Terms of reference

The NUIP (RC) is the Steering Committee for this NCP review. The ARPANSA Secretariat in Melbourne will coordinate the review. An independent Project Manager based in ARPANSA's office in Sydney will prepare an issues paper for public comment, carry out the analysis based on the responses and other information and prepare a draft final report for focussed consultation.

The NUIP (RC) will approve the Final Report and submit it to the Australian Health Ministers' Conference (through the Australian Health Ministers' Advisory Council). The Australian Health Ministers' Conference will forward the Final Report with its comments to CoAG.

Attachment 1 provides the composition and contact details of each member of the Steering Committee and the Review Team.

The legislation to be reviewed is as follows:[19]

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19 Queensland is not participating in the review as it recently completed a public benefits test for its Radiation Safety Act 1999.

The Commonwealth

Australian Radiation Protection and Nuclear Safety Act 1988
Australian Radiation Protection and Nuclear Safety (Licence Charges) Act 1998
Australian Radiation Protection and Nuclear Safety regulations 1999

Australian Capital Territory

Radiation Act 1983

New South Wales

Radiation Control Act 1990
Radiation Control Regulations 1993

The Northern Territory

Radiation (Safety Control) Act 1978
Radiation (Safety Control) Regulations 1980

South Australia

Radiation Protection and Control Act 1982
Ionizing Radiation Regulations 2000
Radiation Protection and Control (Transport of Radioactive Substances) Regulations 1991

Tasmania

Radiation Control Act 1977
Radiation Control Regulations 1994

Victoria

Health Act 1958 (Part V, Division 2AA)
Health (Radiation Safety) Regulations 1994

Western Australia

Radiation Safety Act 1975
Radiation Safety (General) Regulations 1983-1999
Radiation Safety (Transport of Radioactive Substances) Regulations 1980-1999
Radiation Safety (Qualifications) Regulations 1980-1999

Other legislation, which is relevant to the use of radioactive substances and equipment (such as that regulating occupational health and safety, environmental protection, mining and transport) may also be considered to determine its impact, if any, and to assist in recommending improvements to radiation protection legislation.

However, this review excludes any Act or regulation or provisions in any Act or regulation on uranium mining or milling.

The review team is to take into account the following:

(a) legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition;

(b) in assessing the matters in (a), regard should be had, where relevant, to effects on public health and safety, occupational health and safety, the environment, the competitiveness of business, including small business, consumer interests, economic and regional development, efficient resource allocation and international obligations;

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

(d) the suitability and impact of any standards and codes of practice referenced in the legislation, and justification for their retention if they continue to be referenced; and

(e) the need to reduce the compliance costs and paper work burden on small business.

In making assessments in relation to the matters in (a) to (e) above, the review team is to have regard to:

- the relevant Sections of the Competition Principles Agreement;
- the National Competition Council's Guidelines for NCP Legislation Reviews published by the Centre for International Economics; and

- CoAG's Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies

The review team should also make use of material contained in guidelines published by governments on regulatory impact statements and on conducting NCP legislation reviews and is to have particular regard to the following public health and radiation protection issues:

- the effects of related legislation affecting radiation protection;
- whether regulatory differences within and between levels of government add to the costs of Australian businesses;
- whether current arrangements to partially recover the costs of regulatory oversight could be improved;
- whether there are ways to reduce regulatory compliance costs, possibly including streamlining radiation control requirements; and
- whether current arrangements for regulating various occupational groups are appropriate.

The following matters, where relevant, are to be taken into account when assessing the costs, benefits, merits or appropriateness of a particular policy or course of action or in determining the most effective means of achieving a policy objective:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations and access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or a class of consumers;

- the competitiveness of Australian businesses; and
- the efficient allocation of resources.

The final report of the Review should:

- identify the nature and magnitude of the social, environmental or other economic problems that the legislation seeks to address;
- clarify the objectives of the legislation;
- identify the nature and extent of the restrictive effects on competition;
- consider alternatives including non-legislative approaches;
- identify the different groups likely to be affected by the legislative restrictions and alternatives;
- assess and balance the costs, benefits and overall effects of the legislative restrictions and alternatives identified; and
- list the individuals and groups consulted and outline their views or state reasons if consultation was considered inappropriate.

Review of legislation regulating the architectural profession

In November 1999, the Productivity Commission commenced a nine month review of the legislation regulating the architectural profession. This inquiry served as a national review of participating States and Territories' legislation. Victoria, which has completed its own review, did not put its legislation forward for the national review. The Commonwealth has no legislation regulating architects.

Review progress

On 4 August 2000, the Productivity Commission completed a nine month review into the *Legislation Regulating the Architectural Profession*.

The final report was released on 16 November 2000. The review's recommendation is:

Recommendation

State and Territory Architects Acts (under review) should be repealed after an appropriate (two-year) notification period to allow the profession to develop a national, non-statutory certification and course accreditation system which meets requirements of Australian and overseas clients.

In those States and Territories which require all building practitioners who act as principals (including all building design practitioners) to be registered, the following principles should be adopted with respect to architects:

- that architects be incorporated under general building practitioner boards which have broad representation (including industry-wide and consumer representation);
- that there be no restrictions on the practice of building design and architecture;
- that use of a title such as 'registered architect' be restricted to those registered but that there be no restriction on use of the generic title 'architect' and its derivatives;
- that only principals (persons, not companies) to contracts be required to be registered;
- that there be provision for accessible, transparent and independently administered consumer complaints procedures, and transparent and independent disciplinary procedures; and
- that there be scope for contestability of certification (that is, architects with different levels of qualifications and experience be eligible for registration).

Government response

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

1.4 New and amended regulation (enacted since April 1995)

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

The Prime Minister's *More Time for Business*[20] policy statement, prepared in response to the recommendations of the Small Business Deregulation Taskforce, expanded this requirement to apply to all Commonwealth regulation that imposes costs or confers benefits on business.

1.4.1 Regulation impact statements

In order to make transparent the possible impact of proposed legislation on competition, a Regulation Impact Statement (RIS) must be prepared for all proposed new and amended Commonwealth regulation with the potential to restrict competition, or impose costs or confer benefits on business. The RIS must assess the costs and benefits of alternative means of fulfilling the relevant policy objective.

The ORR is responsible for providing guidance and training to Commonwealth Departments and agencies in preparing a RIS, and for assessing its technical adequacy. RIS requirements are detailed in the ORR handbook *A Guide to Regulation* (December 1998).

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

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

The RIS process is intended to ensure 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 process. In this regard, it provides a comprehensive checklist that outlines public policy decision making best practice.

This process is to be used to develop the appropriate policy solution, not to construct a justification after the event.

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

The Commonwealth's overall performance against the RIS requirements, incorporating compliance for new or amended primary legislation, subordinate legislation, quasi-regulation and treaties, is assessed in detail in the Productivity Commission report *Regulation and its Review 1999-2000*.

In 1999-2000, 207 regulatory proposals required a RIS. In 180 cases a RIS was prepared, of which 169 were judged to be of an adequate standard. Accordingly, the compliance rate at the decision making stage was 82 per cent (in 1998-99 the compliance rate was 78 per cent).

159 bills were introduced into Parliament in 1999-2000 which contained 205 policy proposals of which 80 required a RIS. Of the RISs prepared at the decision making stage 80 per cent were adequate (compared to 61 per cent in 1998-99), at the tabling stage 95 per cent were adequate (compared to 89 per cent in 1998-99).

In the case of disallowable instruments, of the RISs prepared at the decision making stage 73 per cent were adequate (compared to 85 per cent in 1998-99) and 86 per cent were adequate at the tabling stage (compared to 88 per cent in 1998-99).[21]

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21 Productivity Commission, 2000, *Regulation and its Review 1999-2000*, AusInfo, Canberra, pp1-7.

1.4.2 Legislation enacted since 1 July 1999 that may restrict competition

Those Commonwealth Acts introduced in the period 1 July 1999 to 30 June 2000 identified by the ORR as having the potential to restrict competition are identified in Table 1. The potential impact of these Acts varies from relatively minor to significant. The actual impact will depend on how the various legislative provisions are utilised.

Table 1: Commonwealth legislation introduced into Parliament between 1 July 1999 and 30 June 2000 having the potential to restrict competition

Commonwealth Acts
Broadcasting Services Amendment Bill (No. 3) 1999
Broadcasting Services Amendment (Digital Television and Datacasting) Bill 2000
Classification (Publication, Films and Computer Games) Amendment Bill (No. 2)
Copyright Amendment (Digital Agenda) Bill 1999
Privacy Amendment (Private Sector) Bill 2000
Product Stewardship (Oil) Bill 2000
Renewable Energy (Electricity) Bill 2000
Health Legislation Amendment Bill (No. 4) 1999
National Health Amendment Bill (No.1) 2000
Gene Technology Bill 2000
Patents Amendment (Innovation Patents) Bill 2000

2. Competitive Neutrality

2.1 Why implement Competitive Neutrality?

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

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

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

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

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

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

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

This improved government business competitiveness does not come at the expense of satisfying legitimate community service obligations (CSOs). However, as discussed in section 2.1.3, CN does encourage greater transparency and efficiency in their provision.

2.1.1 Which government activities are subject to Competitive Neutrality?

The *Commonwealth Competitive Neutrality Policy Statement* (June 1996) (CNPS) deems all Government Business Enterprises (GBEs), Commonwealth share limited companies and Commonwealth Business Units to be 'significant business activities' and, consequently, required to apply CN.

- Designated GBEs are legally separate from the Commonwealth Government, being either a statutory authority established under enabling legislation or a Commonwealth *Corporations Law* company. Their principal function is to sell goods and services for the purpose of earning a commercial rate of return and paying dividends to the Budget.

- Commonwealth share-limited companies are established under *Corporations Law*. Where not designated as a GBE, these companies need not earn a commercial rate of return and are generally financed through subsidies from the Budget and/or receipts from levies or industry taxes. In certain circumstances, they may borrow from commercial markets.

- Business units are separate commercial activities within a Commonwealth Department. They are distinct in an accounting, but not a legal sense, and have access to a Special Account established by the Finance Minister under the *Financial Management and Accountability Act 1997 (FMA Act)*, or by another Act, or their own source of revenue through section 31 agreements under the FMA Act and Appropriation Acts.

Other commercial activities undertaken by Commonwealth authorities and Departments that do not fall within these categories but which meet the established definition of a 'business' and have commercial receipts exceeding $10 million per annum, are assessed on a case by case basis for the requirement to apply CN.

These activities include bids by Commonwealth Government in-house units for activities subject to the *Competitive Tendering and Contracting Guidelines* issued by the Department of Finance and Administration.

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

- there must be user charging for goods and services;

- there must be an actual or potential competitor either in the private or public sector that is, users are not restricted by law or policy from choosing alternative sources of supply; and

- managers of the activity must have a degree of independence in relation to the production or supply of the good or service and the price at which it is provided.

Activities that meet these criteria and have a turnover in excess of $10 million per annum are also considered to be significant business activities.

However, commercial business activities with a turnover under $10 million per annum may be required to implement CN arrangements following a complaint to the Commonwealth Competitive Neutrality Complaints Office (see Section 2.3). Such activities may choose to implement CN principles on a notional basis to pre-empt a complaint on the grounds of an unfair competitive advantage.

CN is required to be implemented only where the benefits of this course of action exceed the costs, and it is cost effective to do so. This requires consideration of the same matters identified in relation to the public interest test for legislation reviews, including social welfare and equity issues such as community service obligations.

Commonwealth statutory authorities and *Corporations Law* companies are subject to the governance and financial accountability arrangements established under the *Commonwealth Authorities and Companies Act 1997*. All other government bodies are subject to the provisions of the *Financial Management and Accountability Act 1997*.

2.1.2 What does the application of Competitive Neutrality require?

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

In general terms, CN implementation involves:

- adoption of a corporatisation model for significant GBEs;
- payment of all relevant Commonwealth and State direct and indirect taxes or tax equivalents;
- payment of debt neutrality charges or commercial interest rates, directed towards offsetting competitive advantages provided by explicit or implicit government guarantees on commercial or public loans;
- attainment of a pre-tax commercial rate of return on assets (to ensure, among other things, payment of CN 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 CN components.

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

Example 1

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

Example 2

Where commercial activities are undertaken within a non-GBE statutory authority, CN 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, CN is to be applied across the board. This ensures that entities do not cross subsidise contestable services from their non-contestable or reserved business activities.

Example 3

Commonwealth businesses in the process of being corporatised or restructured along commercial lines may have a lower pre-tax rate of return target set to accommodate identified public sector employment cost disadvantages for a transitional period of up to three years.

Box 5 clarifies some common misconceptions with regard to CN.

Box 5: Competitive Neutrality — some misconceptions

- CN does not apply to non-business, non-profit activities of publicly owned entities. It also does not prevent activities being conducted as CSOs.
- CN does not have to be applied to Commonwealth business activities where the costs of implementation would outweigh the expected benefits.
- CN is neutral with respect to the nature and form of ownership of business enterprises. It does not require privatisation of Commonwealth business activities, only corporatisation. Where the Government decides to privatise a former public monopoly, the requirements of Clause 4 of the CPA must be met (see Chapter 3).
- CN does not require outsourcing of Commonwealth activities — but when public bids are made under competitive tendering and contracting (CTC) arrangements, they must be CN compliant. As a result, in-house units should not have an unfair advantage over other public or private sector bidders.
- Regulatory neutrality does not require the removal of legislation that applies only to the GBE or agency (and not to its private sector competitors) where the regulation is considered to be appropriate. However, anti-competitive legislation may be reviewed under the Commonwealth legislation review program (see Chapter 1).

2.1.3 Community Service Obligations

A Community Service Obligation (CSO) arises when the Government specifically requires a business to carry out an activity or process that:

- the organisation would not elect to do on a commercial basis, or that it would only do commercially at higher prices; and

- the Government does not, or would not, require other organisations in the public or private sectors to fund.

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

CN does not prevent the provision of CSOs, but it does establish certain requirements in terms of their costing, funding and interaction with other CN 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.

Where an organisation wishes to have an activity recognised as a CSO, it must be directed explicitly to carry out that activity on a non-commercial basis in legislation, government decision or publicly available directions from shareholder Ministers (for example, identified in the annual report of the relevant Commonwealth Department or authority annual report).

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

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

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

2.2 Commonwealth entities and activities subject to Competitive Neutrality

Portfolio Ministers are responsible for ensuring that all significant business activities within their portfolio comply with established CN requirements.

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

Going forward, the Department of the Treasury will be implementing improved reporting processes for CN policy. Treasury reporting will be based on a Department of Finance and Administration survey of Commonwealth Government agencies, commencing in 2001.

This process will improve the transparency of agencies' application of, and compliance with CN principles. Agencies are also required to report on CN compliance in their annual reports.

2.2.1 Government Business Enterprises

Government Business Enterprises (GBEs) are required to have their CN arrangements approved by the Minister for Finance and Administration and the responsible portfolio Minister. The CN guidelines require that GBEs:

- pay all Commonwealth direct and indirect taxes, and State indirect taxes or tax equivalents (to have commenced by 1 July 1997);
- earn a commercial rate of return on assets as determined by their shareholder Minister(s);
- where borrowing from private financial markets, have a debt neutrality charge set by their shareholder Minister(s) based on stand alone credit rating advice; and

- where borrowing from the Budget, pay a commercial interest rate determined by the Department of Finance and Administration based on stand alone credit rating advice.

Australian Defence Industries Limited

The sale of Australian Defence Industries (ADI) Limited was announced on 17 August 1999 and completed on 29 November 1999.

Prior to being sold, ADI Limited complied with CN principles.

Australian Government Solicitor

On 1 September 1999, the Australian Government Solicitor (AGS) became a statutory authority (within the Attorney-General's portfolio), managed by its Chief Executive and accountable through two shareholder Ministers to Parliament. The Judiciary Act sets out the constitution, functions and powers of AGS, including the persons and bodies for whom AGS may provide legal and other services.

The AGS has been financially and administratively separate from the Attorney-General's Department since 1 July 1997 and became subject to the *Financial Management and Accountability Act 1997* on 1 September 1998.

Since 1 September 1999, AGS has been a Commonwealth authority for the purposes of the *Commonwealth Authorities and Companies Act 1997* (CAC Act) and has been prescribed as a GBE for the purposes of that Act.

The establishment of AGS as a statutory authority gives it a transparent and accountable organisational structure. This structure also facilitates compliance with CN principles and increased competitiveness with the private sector.

Under section 55ZC of the Judiciary Act, AGS is exempt from taxation under State or Territory laws. Under section 55ZD, the Attorney-General and the Minister for Finance and Administration are able to establish the tax-equivalent payment that is to be made by AGS to the Commonwealth in respect of each financial year. The amount of the payment is to be worked out having regard to the purpose of ensuring that the AGS does

not enjoy net competitive advantage over its competitors because of the operation of section 55ZC or any other exemption from taxation liability applying to the AGS.

Under section 55ZE of the Judiciary Act, the Attorney-General and the Minister for Finance and Administration have established corporate governance arrangements for AGS. These arrangements require AGS to pay a dividend to the Commonwealth and to pay a specified amount to the Commonwealth for the purpose of ensuring that AGS does not enjoy net competitive advantages over its competitors by virtue of its public sector ownership.

CN payments provided for, in respect of the reporting year, include an income tax equivalent of $4.857 million and dividend payments of $5.124 million.

AGS operates on a full cost recovery basis. It is not subject to any CSOs.

Australian River Co Limited

Australian National Line Limited (ANL), now known as Australian River Co Limited(ARCO), is a wholly owned Commonwealth share-limited company, for which a joint shareholder arrangement is in place involving the Minister for Transport and Regional Services and the Minister for Finance and Administration.

The businesses comprising ANL were sold during 1998-99. The residual function of ARCO is limited to the financial flows associated with the remaining life of leases involving four ships chartered to, and operated by, other companies.

Consequently, CN principles were not applied during 1999-2000.

Australian National Railways Commission

The sale and transfer of the Australian National Railways Commission (AN) operating business to other entities was completed in 1997-98, with the rail access businesses and assets transferring to the Australian Rail Track Corporation on 1 July 1998. AN has no remaining undertakings during 1999-2000 and was wound up on 31 October 2000.

Consequently, CN principles were not applied during 1999-2000.

Australian Postal Corporation

Australia Post and its subsidiary companies pay all Commonwealth, State and local government taxes and charges.

Legislation was introduced into the House of Representatives in April 2000 to give effect to the Government's response to the NCC's review of the *Australian Postal Corporation Act 1989*. CN issues identified in the legislation include:

- providing for greater transparency of Australia Post's accounts to be able to assure competitors that Australia Post is not cross-subsidising from the monopoly reserved services to the non-reserved services it provides in competition with private operators; and

- providing for the oversight of the accounting transparency arrangements by an independent body, the ACCC.

Australian Rail Track Corporation

The Australian Rail Track Corporation (ARTC) was established as a commercial entity in February 1998. Its primary purpose is to attract private operators to rail operations on the interstate network by providing a single point of access for this network.

ARTC is required to meet commercially driven shareholder requirements, raise capital in the commercial finance sector, meet a Government set commercial rate of return target and achieve reasonable returns by way of dividend. As a commercial entity, it is subject to all Commonwealth and State taxes.

Australian Technology Group Limited

The Australian Technology Group (ATG) was formed in 1994, by the Commonwealth and three private shareholders, in response to a recommendation of the Task Force on Commercialisation on Research in its report *Bringing the Market to Bear on Research*. This report found that Australia's technology transfer bodies (for example, commercial arms of

universities) and venture capital firms did not have the resources, expertise or charter to adequately source, supply or negotiate early stage commercialisation of technology.

ATG is a technology commercialisation corporation set up to provide early stage venture capital and management expertise, with its staff working with investee personnel to develop a viable business plan and bring new technology to market. ATG's operations comply with competitive neutrality principles.

Since ATG's formation, the market for early stage technology commercialisation has evolved considerably. Following a review and scoping study which evaluates options for divestment and/or continued management of the Commonwealth's interest in ATG, the Government decided to divest its interest in the company. The Office of Asset Sales and IT Outsourcing began assessing options for the divestment in 1999-2000.

ComLand

ComLand and its subsidiary companies, Footscray Land Limited Pty Ltd and St Mary's Land Limited Pty Ltd are engaged in a land development joint venture and paid all applicable State and Commonwealth taxes in 1999-2000.

The Commonwealth has guaranteed ComLand's borrowings to a maximum of $60 million. The company borrows from the market at commercial rates.

Defence Housing Authority

Ministerial discussions during 1999-2000 (and subsequently) on the application of CN to the Defence Housing Authority's activities has resulted in agreement that tax equivalent payments would be made from July 2000 and that debt neutrality arrangements should apply where required.

Employment National Limited and Subsidiary

Employment National Limited and its subsidiary company, Employment National (Administration) Ltd were established in May 1998. The company's job matching revenues are set under the terms of Job Network 2 contracts awarded via a competitive tender process. All other business is market-based.

Following adverse business developments associated with the outcome of the Job Network 2 tender process, the Government as shareholder has committed $56m over three years from 2001-02 to support Employment National's efforts to rebuild its business. The Government's equity support is provided to allow the company to carry on business in a manner which limits the ongoing financial risk to, and support required from, the Commonwealth. Any non-competitively neutral practices would be contrary to these principles and the company's strategic operating principles endorsed by the Board.

Employment National is subject to the same Commonwealth, State and Territory taxes as other employment services providers and its operations comply with CN principles.

Essendon Airport Limited

Essendon Airport Limited (EAL) is a Commonwealth owned *Corporations Law* company established to operate Essendon Airport under lease from the Commonwealth.

EAL is subject to the same regulatory regime as privatised airports. The company is subject to the same taxes as other airports. An appropriate rate of return target has not been established.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

In October 2000, the Government announced that it will offer the shares in Essendon Aiport Limited for sale. The sale process is expected to be completed in late August 2001.

Health Services Australia Limited

Health Services Australia (HSA) was established on 1 July 1997 as a wholly Commonwealth owned share limited *Corporations Law* company. It was formerly the Australian Government Health Service, a branch within the (then) Department of Health and Family Services.

Its principal function is to provide accessible, expert and independent health and medical services in the corporate, occupational and related sectors.

HSA pays all Commonwealth taxes, and all State taxes or tax equivalents.

HSA's goods and services are priced on a full cost allocation basis. The HSA has no borrowings, no regulatory neutrality issues and no CSOs.

Medibank Private Limited

On 1 May 1998, ownership of Medibank Private Limited was transferred from the Health Insurance Commission to the Commonwealth. At this time, responsibility for the operation of Medibank Private was transferred to a new company, Medibank Private Limited, under the *Health Insurance Commission (Reform and Separation of Functions) Act 1997*.

The principal function of Medibank Private Limited is to provide health insurance to the Australian public.

In 1999-2000, Medibank Private Limited paid all Commonwealth taxes except income tax and all State taxes. Medibank Private has no debt neutrality requirements, no regulatory neutrality issues and no CSOs.

Goods and services are priced on a full cost allocation basis.

Snowy Mountains Hydro-Electric Authority

Legislation to corporatise the Snowy Mountains Hydro-Electric Authority (SMHEA) was passed by the Commonwealth, New South Wales and Victoria in the second half of 1997.

Once corporatised, Snowy Hydro Limited (the name of the corporatised body) will be subject to all State and Commonwealth taxes and debt currently carried by SMHEA will be re-financed on commercial terms.

Implementation agreements are being negotiated between the three Governments and will be finalised following completion of the Snowy Water Inquiry.

Sydney Airports Corporation Limited

The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned *Corporations Law* company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth.

It is subject to the same regulatory regime as privatised airports. Full CN principles apply, with the company subject to the same taxes as other airports. An appropriate rate of return target has been established.

A single shareholder arrangement has been introduced to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

In December 2000, the Government announced its decision to break up SACL and privatise it as two separate and competing companies. The Government aims to complete the sale of the company which operates Sydney (Kingsford Smith) Airport in the second half of 2001.

Telstra Corporation Limited

Telstra complies with all aspects of the Commonwealth's CN arrangements.

The Government further reduced its ownership stake in Telstra by offering up a further 16.6 per cent of Telstra for sale during 1999-2000. The Commonwealth now owns 50.1 per cent of the issued shares and will continue to have a controlling interest. Telstra pays all Commonwealth, State and Territory taxes and charges. Telstra's credit

rating is determined on a 'stand alone' basis by the market. Telstra's debt neutrality margin for 1999-2000 was zero for CN purposes.

2.2.2 Commonwealth Business Units

CN arrangements applied to Commonwealth Business Units are to be approved by the responsible portfolio Minister. The CN guidelines require Business Units to:

- pay Fringe Benefits tax (FBT) and Wholesale Sales Tax (WST), unless an exemption is available for reasons other than their public ownership;
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial interest rate determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

Australian Government Actuary

The Australian Government Actuary (AGA) operates through a Special Account established under the *Financial Management and Accountability Act 1997*. On 4 April 2000, the AGA was determined as a business operation pursuant to FMA Order 6.2.1, which requires the production of separate, auditable financial statements.

The application of CN principles to the AGA is under review.

Australian Government Analytical Laboratory

In March 1997, a Memorandum of Understanding (MOU) between the (then) Minister for Finance and the (then) Minister for Administrative Services was agreed for the purposes of establishing a framework for the operations of the Australian Government Analytical Laboratories (AGAL). The MOU required AGAL to operate under an individual Group 2 Trust Account (now FMA Special Account), and to comply fully with the Commonwealth's competitive neutrality arrangements.

On 1 July 1999, AGAL was determined as a business operation pursuant to FMA Order 6.2.1, which requires the production of separate, auditable financial statements for that activity. In 1999-2000, AGAL made tax equivalent payments in lieu of indirect taxes consisting of payroll tax, WST and state government stamp duties.

AGAL operates on a debt-equity structure established in line with the MOU, which provides for an interest charge based on the interest rate determined by the Department of Finance and Administration. Goods and services are priced on a full cost allocation basis.

Members of supplier panels set up to deliver outputs for AGAL's CSO funded Public Interest Program have been required to declare they operate under a corresponding competitive neutrality regime.

During 2000-01, AGAL will be subject to a review to determine its mandate and operating model for the next ten years.

Australian Protective Service

The Australian Protective Service (APS) provides a range of high-quality protective security and custodial services to Commonwealth government agencies protecting Australia's key assets and interests. The CN arrangements have been incorporated as a pricing component since July 1998.

The APS is a commercial business activity with a commercial turnover of at least $10 million per annum. It is located within the Attorney General's Department.

The CN complaint reported in the *1998-99 Commonwealth National Competition Policy Annual Report* has been resolved. The APS's pricing structure was readjusted to reflect the recommendations of the Commonwealth Competitive Neutrality Complaints Office.

Australian Valuation Office

The Australian Valuation Office has implemented CN.

Commonwealth Rehabilitation Service

Commonwealth Rehabilitation Service Australia (CRS) is a Commonwealth business that assists people with injuries, disabilities or health problems achieve their potential for participation in Australian society. In 1999-2000 the commercial business revenue was in excess of $30 million.

During the year CRS continued to comply with CN principles.

CRS calculated a tax equivalent payment to recognise Commonwealth and State Government taxes which would be applicable if the organisation was not subject to exemptions as a Commonwealth entity.

CRS paid Fringe Benefits Tax directly to the Australian Taxation Office (ATO) and since 1 July 2000 has accounted for the Goods and Services Tax. CRS has completed monthly Business Activity Statements and made appropriate payments to the ATO.

CRS generated sufficient profits to enable a dividend return to the Department of Finance and Administration.

Removals Australia

Removals Australia (the Commonwealth's relocation brokerage business) operates on a cost recovery basis. The sale of Removals Australia was finalised in January 2000.

Royal Australian Mint

CN arrangements were applied to the Royal Australian Mint from 1 July 1998. These arrangements include establishment of a commercial rate of return based upon its gross performing assets (including items classified as CSOs), payment of WST, implementation of a tax equivalent regime for other taxes, formal ministerial agreement for its coin museum CSO and repayment of budget borrowings at commercial rates.

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

CN arrangements applying to significant commercial business activities provided by non-GBE statutory authorities or Departments are to be approved by the relevant portfolio Minister. The CN guidelines require significant commercial activities to:

- pay FBT and WST (unless exemptions are available to them for reasons other than their public ownership);
- make tax equivalent payments for remaining Commonwealth and State taxes;
- meet the required commercial rate of return on assets target set by the relevant Department, in consultation with the Department of Finance and Administration;
- where borrowing from private financial markets, have any debt neutrality charge set by the relevant portfolio Minister based on stand alone credit rating advice; and
- where borrowing from the Budget, pay a commercial rate of interest determined by the relevant portfolio Minister in consultation with the Department of Finance and Administration, based on stand alone credit rating advice.

Aged Care Standards and Accreditation Agency

Aged Care Standards and Accreditation Agency pays all Commonwealth and State taxes, with the exception of income tax, and a commercial rate of interest for budget borrowings.

Goods and services are priced on a full cost allocation basis.

Airservices Australia

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Government initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a function of ensuring the safe and efficient use of Australian airspace. The review, reported in early 1998, has been considered by Government, but has not been published.

CN in the provision of services to airport operators by air traffic control providers, both Airservices and other parties, has been addressed in the review. The Civil Aviation Safety Authority (CASA) is in the process of developing a safety regulatory framework for the provision of air traffic control services and aerodrome rescue and fire fighting services. Once this framework is in place and the necessary legislative amendments have been made, alternative service providers will be able to compete in the market.

CN arrangements have not been implemented for Airservices Australia because it is currently a legislated monopoly. The reform process to allow competition is taking place and CN arrangements will be made when this process is complete.

A similar situation applies with the provision of rescue and fire fighting services.

En-route services are now and will remain an Airservices Australia monopoly, for technical reasons.

Albury-Wodonga Development Corporation

The Albury-Wodonga Development Corporation (AWDC) is being wound up, with the *Albury-Wodonga Development Amendment Act 2000* receiving Royal Assent on 3 May 2000. The NSW and Victorian Parliaments are responsible for complementary legislation that will lead to the withdrawal of the states from the Albury-Wodonga Growth Centre Project. A Winding-up Agreement between the Commonwealth, NSW and Victoria is also being drafted.

As the AWDC is in the process of being wound up, it is not officially required to implement CN. However, it operates in a commercial manner in delivering the Commonwealth a return in the disposal of its assets.

Army and Air Force Canteen Service

There are no major CN issues in relation to the retailing services of the Army and Air Force Canteen Service.

Australian Broadcasting Corporation

The Australian Broadcasting Corporation (ABC) has two business areas subject to CN. These are ABC Enterprises and its production and facilities hire activities.

The ABC was unable to provide separate financial reports for ABC Enterprises in its 1999-2000 Annual Report due to the impact of accounting changes associated with the new tax system. It has undertaken to ensure that separate reports will be available in subsequent years.

ABC Production Facilities was subject to a CN complaint (see page 153).

Australian Hearing Services

Australian Hearing Services (AHS) paid all Commonwealth and State direct and indirect taxes and tax equivalents.

A pre-tax commercial rate of return target has not been set. The AHS has no borrowings and no regulatory neutrality issues.

The Department of Health and Aged Care purchases services from AHS. Currently these services are funded by fixed appropriation and not related to demand. Negotiations are under way to agree on a volume based contract with a price per service.

Australian National University

The Commonwealth's principle is that universities should ensure that the price of services or products that are of a purely commercial nature cover their full cost.

Competitive Neutrality Implementation Strategy for Universities

In 1999 the Committee on Regulatory Reform Sub-Group on Higher Education considered introducing a common approach to the application of competitive neutrality principles across the States and Territories. The Sub-Group decided that it would remain up to States and Territories to determine whether universities in their jurisdictions are complying with the principles of competitive neutrality.

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 and took all the marketing and financing functions of the former Australian Wheat Board. The issue of CN is therefore no longer relevant.

Commonwealth Scientific and Industrial Research Organisation

On 24 September 1997, the (then) Minister for Industry, Science and Tourism advised the Commonwealth Scientific and Industrial Research Organisation (CSIRO) of the Commonwealth's decision regarding the application of CN. Specifically, CSIRO is required to:

- include commercial pre-tax rate of return and taxation equivalent regime components in the charges for consulting and technical service activities undertaken; and

- use full cost pricing in the costing of research project bids, unless there are national interest considerations, and include allowances for tax and rate of return targets if these are known to be incurred by competing bidders.

The Minister approved the framework for implementing CN in CSIRO on 11 May 1998, with CSIRO's policy on CN being released on 1 July 1998. The changes to CSIRO's costing and pricing policies apply to all new contracts entered into from 1 July 1998. All of CSIRO's commercial activities are now subject to CN principles and the CN complaints mechanism.

It is CSIRO policy that:

- all projects/activities should be costed to identify their full costs (including divisional and corporate overheads) to CSIRO;

- the pricing of commercial activities must be based on the perceived value to the client and estimate of their full costs;

- for technical and consulting services, the price must cover the estimated full costs and include commercial pre-tax rate of return and tax equivalent regime components (a CN on-cost factor);

- for research projects, the price must cover the estimated full costs, unless there are national interest consideration, and include commercial pre-tax rate of return and tax equivalent regime components (a CN on-cost factor) if tax and rate of return requirements are known to be incurred by competing bidders; and

- all pricing decisions, including the estimate of costs, must be fully documented and retained for audit purposes as part of the risk assessment in the contract approval process.

To ensure transparency of funding arrangements, commercial activities are required to be structured on a project/activity basis to facilitate

accounting separation and attribute all costs (including divisional overheads) on a project/activity basis.

The Government has agreed that CN does not apply to services provided by the national research facilities administered by CSIRO, as there is no actual or potential competitor. These facilities are the Australian Telescope, the Australian Animal Health Laboratory, the Oceanographic Research Vessel *Franklin* and the National Measurement Laboratory.

Export Finance and Insurance Corporation

The Export Finance and Insurance Corporation (EFIC) provides competitive export finance, insurance and guarantee services to Australian exporters.

During 1999-2000 there has been considerable progress in the application of CN to EFIC. The *Export Finance and Insurance Corporation Amendment Act 2000* came into force on 15 March 2000. This legislation amended the *Export Finance and Insurance Corporation Act 1991* to require EFIC to pay tax-equivalent payments (from 1 July 1998 onwards), a debt neutrality charge where applicable, and a guarantee charge on its short-term credit insurance operations. It also removed EFIC's exemption from the *Insurance (Agents & Brokers) Act 1984* and the *Insurance Contracts Act 1984* for short-term credit insurance operations. This legislation implemented earlier Government decisions to apply CN to EFIC's short-term credit insurance operations but not to medium-long term operations or National Interest Account business, as these areas were not deemed to be subject to competition from the private sector. Apart from levying the guarantee charge, all aspects of this legislation were implemented by 1 July 2000. As the guarantee charge is particular to EFIC, a methodology to set an appropriate charge has needed to be developed from basic principles.

In June 2000 the Minister for Trade, the Hon Mark Vaile MP, announced a review into the provision of export credit and finance services. The terms of reference included consideration of the application of CN policy to business. On the basis of this review, the Government announced in November 2000 that EFIC would enter into an alliance with a private sector insurer in regard to its short term credit insurance business.

Through this process the Government would eventually look to withdraw from the clearly commercial elements of EFIC's business.

National Rail Corporation

National Rail Corporation began providing services in 1993 as an 'above rail' operator in the interstate freight market. The shareholders of National Rail are the Commonwealth Government (approximately 70 per cent), and the State Governments of New South Wales (approximately 20 per cent) and Victoria (approximately 10 per cent).

The shareholders of National Rail announced in May 2000 their intention to conduct a joint sale of their shareholdings in National Rail. The NSW Government announced its intention to sell its freight rail operator FreightCorp in September 2000, indicating a strong preference that FreightCorp be sold to the same purchaser as NRC. Discussions are continuing between the shareholders of both companies on a possible combined sale of the two entities. The sale of National Rail is being managed by the Office of Asset Sales and Commercial Support.

Two CN complaints against NRC were lodged with the CCNCO during 1999-2000 by Capricorn Capital Limited on behalf of Austrac (see page 154).

Reserve Bank of Australia

The following Reserve Bank of Australia (RBA) businesses are subject to CN: Registry; Reserve Bank Information Transfer System (RITS); transaction banking and Note Printing Australia.

The registry business operates in a declining and competitive market. The RBA currently provides registry services for the Commonwealth, the South Australian Government Financing Authority and some small issuers. The business has lost tenders for several state registries over recent years. Because of its small size and uncertain future, the business has not been corporatised. However, a separate set of accounts, based on full cost allocation and other CN principles, has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1999-2000 Annual Report.

RITS provides facilities for the electronic transfer and settlement of transactions in Commonwealth Government Securities (CGS) for members. Revenue is based on fees that reflect full cost recovery. RITS is also the platform used by the RBA to form the core of its Real Time Gross Settlement (RTGS) system for high value payments. RTGS is a non-contestable function. Consequently, the RITS business for CN purposes covers only the business of electronic settlement of CGS. This business, because of its small size and a potential ownership change, has not been corporatised. However, a separate set of accounts, based on full cost allocation and other CN principles, has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1999-2000 Annual Report.

The RBA provides transactional banking services to the Commonwealth, some Commonwealth authorities and the South Australian Government. These services are largely payments and collection processing and related data transmission services. Over recent years, the RBA, at tender, has lost the business of the Tasmanian, Western Australian and Australia Capital Territory Governments to private bankers. Its principal customers are the Commonwealth Government and Departments. The Commonwealth is not obliged to bank with the RBA. Rather, the *Reserve Bank Act 1959* empowers the RBA to provide banking services to the Commonwealth '…in so far as the Commonwealth requires it to do so…'.

Following the devolution of responsibility for banking to agencies by the Department of Finance and Administration on 1 July 1999 the RBA split its banking business between the core (non contestable) function and the (contestable) transaction based banking. This separation has been finalised.

As part of the core banking function, at the close of business each day all transactional bankers are required to sweep the Government's funds to the Commonwealth's accounts at the RBA. This process ensures that the Commonwealth does not lose the benefit of interest on funds lodged with the banking system overnight as well as facilitating the RBA's monetary policy operations. This part of the business is governed by a formal Memorandum of Understanding with the Department of Finance and Administration. The RBA charges the Department for undertaking this work.

During 1999-2000, it was expected that most agencies would market test their transaction processing banking business. The process has been much slower than envisaged and, to date, only five lead agencies have market tested their business. The RBA has won two and private banks have won three of these tenders.

The banking business, because of its uncertain nature, has not been corporatised. However, a separate set of accounts reflecting full cost allocation and other CN principles, has been established. The business is trading profitably on this basis and performance data were published in the RBA's 1999-2000 Annual Report.

Note Printing Australia (NPA) was corporatised from 1 July 1998. NPA is accounted for separately in accordance with CN principles. It has completed its second year as a corporatised entity with stand-alone premises, accounts and an independent Board of Directors.

NPA operates as a commercial printer of Australian banknotes for the RBA. Its rate of return is above the benchmark rate and expected to continue that way. Its business activities are carried out in accordance with commercial objectives and a business plan.

Special Broadcasting Service

The Special Broadcasting Service (SBS) applies CN principles in its areas of commercial activities, including advertising and sponsorship revenue. The SBS has undertaken to notify the Minister if these arrangements change or its competitive position improves. There have not been any notifications in this financial year.

2.2.4 Other Commonwealth activities

There are a number of non-significant Commonwealth business activities for which the application of CN principles is being considered or undertaken. They may also be required to implement CN as a result of a complaint to the Commonwealth Competitive Neutrality Complaints Office (see Section 2.3).

These non-significant business activities have to earn a commercial rate of return (set by their parent agency), pay WST and FBT (unless

exemptions are available for reasons other than government ownership) and make tax equivalent payments for remaining Commonwealth indirect taxes.

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

Bureau of Meteorology

Commercially-oriented business activity within the Bureau of Meteorology occurs in the financially decoupled Special Services Unit (SSU), with an annual turnover of approximately $8 million. Although this does not meet the criteria for designation as a business activity, the Bureau operates the SSU generally in line with CN principles. The remainder of the Bureau provides services in the public interest.

In 1999-2000 the Bureau of Meteorology was subject to a CN complaint. The complaint was about the arrangements governing the provision of aviation forecasts. The CCNCO deferred the investigation, pending the release of a discussion paper by the Civil Aviation Safety Authority on the competitive provision of weather forecasts to the Australian aviation industry.

The Bureau is to undertake a strategic review that will further refine the processes whereby products are allocated to the public good, full cost recovery or a commercial category. In addition, the Bureau will review the financial information systems which deliver data for allocating costs to products.

Aboriginal Hostels Limited

The final report of the review of Aboriginal Hostels Limited (AHL) was completed in November 1999. The report found that in specific geographic areas of AHL's operations there were some possible issues of CN that needed further consideration. The Inter-departmental Steering Committee found that AHL usually only operated or subsidised hostels in areas where it was uneconomical for non-government participants to operate. AHL continually reassesses the need for its intervention in

temporary accommodation markets. AHL is also reviewing its pricing policy.

2.2.5 Competitive Tendering and Contracting

Competitive Tendering and Contracting (CTC) is a process of selecting a preferred supplier from a range of potential contractors by seeking offers and evaluating those offers on the basis of one or more selection criteria. This may involve a choice between an in-house supplier and external contractors (from either the private or public sector).

CN arrangements should be applied to all bids by Commonwealth Government 'in-house' units for activities subject to the *Competitive Tendering and Contracting Guidelines* issued by the Department of Finance and Administration. This ensures that in-house units compete on a comparable basis to private (and other public) sector competitors.

In practice this means:

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

- where it is determined to competitively tender for the supply of the good or service, that activity is to be regarded as a commercial activity. Any significant in-house bid needs to reflect the full cost of providing the good or service:

  - this includes an attribution for any shared and joint costs, payment of FBT and WST (on direct purchases), tax equivalent payments for remaining Commonwealth and State taxes, debt neutrality charges, a notional amount equivalent to any public liability insurance premiums a private sector contractor may be required to pay; and

  - incorporate a commercial pre-tax rate of return on assets. Where plant and facilities are to be made available to all bidders as Government furnished, in-house bids do not need to include a rate or return on such capital.

- the Commonwealth purchaser of the good or service is entitled to require that all tender bids submitted by government owned or funded activities certify compliance with Commonwealth CN requirements; and

- non-compliance could result in a complaint being made to the Commonwealth Competitive Neutrality Complaints Office (see section 2.3).

CTC units with turnover (bid) under $10 million per annum still have to earn a commercial rate of return (set by their parent agency), pay FBT and WST (unless exemptions are available for reasons other than government ownership) and tax equivalent payments for remaining Commonwealth indirect taxes. However, other CN costs may be incurred on an (auditable) notional basis for example, payments of remaining Commonwealth direct taxes, States indirect taxes and debt neutrality charges.

Australian Customs Service

Tender documentation associated with the market-testing program commencing in 2000-01 will require public sector bidders to demonstrate that CN requirements have been addressed.

While tender documentation in 1999-2000 did not specify this requirement, CN was addressed during evaluation where it was relevant to the outcome of the tender.

2.3 Complaints alleging non compliance with CN principles

The Commonwealth Competitive Neutrality Complaints Office (CCNCO) is an autonomous unit within the Productivity Commission. It was established under the *Productivity Commission Act 1998* to receive complaints, undertake complaint investigation and advise the Treasurer on the application of CN to Commonwealth Government activities. Contact details are provided below:

Commonwealth Competitive Neutrality Complaints Office
Locked Bag 3353
BELCONNEN ACT 2617
Telephone: (02) 6240 3377
Facsimile: (02) 6253 0049
Website: www.ccnco.gov.au

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

- a Commonwealth business activity has not been exposed to CN arrangements (including a commercial activity below the $10 million per annum turnover threshold);[22]
- a Commonwealth business activity is not complying with CN arrangements that apply to it; or
- current CN arrangements are not effective in removing a Commonwealth business activity's net competitive advantage, which arises due to government ownership.

Where the CCNCO considers that CN 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 CCNCO may recommend appropriate remedial action or that the Treasurer undertake a formal public inquiry into the matter.

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

2.3.1 Complaints received in 1999-2000

In 1999-2000, the CCNCO carried out four investigations arising from complaints of non-compliance with CN principles.

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

AIS Swim School

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

The CCNCO found that the AISSS derived no significant net competitive advantage as a result of its ownership by the Commonwealth Government; employed costing and pricing practices that were consistent with, and exceeded, the requirements that would apply were it subject to CN; received no significant competitive advantage from its tax exempt status and had not priced its services in a way that had eliminated or substantially damaged a competitor, deterred entry or competitive conduct in the market or been inconsistent with efficient resource allocation.

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

National Rail Corporation

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

The CCNCO found that NRC was in technical breach of the rate of return requirements under CN principles as NRC had not earned a commercial rate of return (the long term bond rate plus a risk margin) for the years 1995-96 to 1998-99, however, this was not sufficient to find that NRC's performance to date has been in breach of CN policy. The CCNCO concluded that NRC is still in an establishment phase, given the substantial restructuring and associated outlays involved in the

formation of NRC. The CCNCO also noted that the rate of return projected in NRC's Corporate Plan to 2000-02 would not present a commercial return. If NRC continues to achieve this level of return in the future then this could result in further CN complaints.

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

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

The sale of NRC is expected to be completed in 2001.

ABC Production Facilities

In November 1999, Global Television Pty Ltd wrote to the CCNCO alleging that ABC Production is not complying with CN. Global Television claims that ABC Productions' access to resources purchased for non-commercial production enables it to provide services at a lower cost than competitors. Specifically, it alleges that ABC production facilities are not priced to fully cover costs and are not subject to a range of taxes paid by private competitors.

The CCNCO found that ABC Productions' method of costing labour and facilities exceeds the minimum cost that is required under CN policies. Notwithstanding the ABC's exemption from various taxes, it found that ABC Productions' pricing decisions are consistent with the CN requirement that a commercial rate of return be earned on assets, which ABC Productions did in the year 1998-99. Accordingly, the CCNCO concluded that ABC Productions has not breached CN principles.

The CCNCO does not consider that any action is required in response to the complaint. However, it does suggest that the ABC should consider incorporating a notional allowance for payroll tax in its bids to address concerns like those raised in Global Television's complaint.

This suggestion was drawn to the attention of the Portfolio Minister.

Provision of Customs Services to Australia Post

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

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

2.4 Commonwealth actions to assist CN implementation

2.4.1 Policy measures

It is general Government policy not to issue a Commonwealth Government Guarantee on new borrowings. Where these are to be provided, the approval of the portfolio Minister, the Treasurer and the Prime Minister is required.

2.4.2 Publications

A handbook entitled *Commonwealth Competitive Neutrality Guidelines for Managers* was released in early 1998, to assist in the application of CN principles to the wide range of Commonwealth significant business activities. Copies of this handbook are available from the

Commonwealth Department of the Treasury or the Treasury website (www.treasury.gov.au).

The CCNCO released its research paper *Cost Allocation and Pricing* in October 1998. The paper examines these issues in the context of significant business activities operating within non-GBE Commonwealth authorities or Departments meeting their CN obligations. A second paper, *Rate of Return Issues*, was released in December 1998. This paper provides general advice on establishing a commercial rate of return on assets targets, particularly for small government business activities, and those factors the CCNCO will take into account when rate of return issues arise in a complaint. These publications are available from the CCNCO (www.ccnco.gov.au).

In March 1998, the Commonwealth Department of Finance and Administration released its handbook *Competitive Tendering and Contracting Guidance for Managers*, which explains the requirement for CN compliance. This publication is available from the Department (www.finance.gov.au).

3. Structural Reform of Public Monopolies

3.1 Commonwealth management of the structural reform process

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

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

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

- the appropriate commercial objectives for the public monopoly;
- the merits of separating any natural monopoly elements from potentially competitive elements of the public monopoly;
- the merits of separating potentially competitive elements of the public monopoly;
- the most effective means of separating regulatory functions from commercial functions of the public monopoly;
- the most effective means of implementing the competitive neutrality principles set out in the CPA;
- the merits of any community service obligations undertaken by the public monopoly and the best means of funding and delivering any mandated CSOs;

- the price and service regulations to be applied to the industry; and
- the appropriate financial relationships between the owner of the public monopoly and the public monopoly, including rate of return targets, dividends and capital structure.

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

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

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

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

3.1.1 Telecommunications industry sector

The telecommunications sector has been open to full competition since 1 July 1997. It is regulated by legislation, predominantly the *Telecommunications Act 1991* and Parts XIB and XIC of the *Trade Practices Act 1974* (TPA).

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

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

The Commonwealth's review obligations under clause 4 were broadly satisfied through a series of related reviews prior to the partial privatisation of Telstra in 1997.

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

A Review of Parts XIB and XIC of the *Trade Practices Act 1974* is being conducted by the Productivity Commission. A draft report was released in March 2001 and the final report is due in September 2001.

3.1.1.1 Competition in provision of USO services

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

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

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

- two pilots for regional USO contestability schemes.

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

The USO contestability pilots will enable carriers to compete with Telstra for subsidies to provide standard telephone services that would otherwise be uncommercial. Subsidies will be allocated on a per service basis, with competing carriers required to pre-qualify with the Australian Communications Authority to participate. If the contestability model is proven, contestability will become the default in the pilot areas and the model will be extended nationally.

Enabling legislation for the implementation of the extended zones tender was passed in July 1999, further Bills providing for the USO contestability pilots were passed in mid-2000. For the Extended Zones tender Requests for Tenders were issued on 5 October 2000 to seven companies who had previously registered an expression of interest. Telstra was announced to be the preferred tenderer in February 2001 and the contracts were signed in May 2001.

3.1.2 Federal Airports Corporation

The Federal Airports Corporations (FAC) owned and operated most of Australia's major airports from 1988 until 1997, when privatisation of the airports through the sale of long-term leases commenced.

Long-term leases for the first 3 of the 22 airports were signed in 1997, with the sale of leases for a further 14 airports completed by mid 1998. The remaining five airports (the Sydney Basin and Essendon Airports) were leased to newly created Commonwealth owned companies in mid 1998. The FAC ceased operating in September 1998.

Some aspects of airport operations exhibit monopoly characteristics. In approaching privatisation, the Commonwealth put considerable effort into creating a regulatory framework that would maximise competition and protect consumer interests following privatisation.

3.1.2.1 Airport Industry Regulation

The FAC was self regulating in a large number of areas, including land use and environmental planning and control, commercial and retail trading and liquor licensing. As part of the sales process, the Parliament

passed the *Airport Act 1996* that removed these responsibilities from airport lessees.

Provisions were also put in place relating to land use planning and the environment that require airport lessees to develop long-term plans for the development and protection of the environment at the airport.

Commonwealth-appointed statutory office holders assess day to day compliance with Building Control and Environmental Protection Regulations at the airports. These requirements apply to all the leased airports (including Commonwealth owned airports), with the exception of the Mount Isa and Tennant Creek airports. These airports are subject to the relevant State and Territory planning laws.

In relation to control of on-airport activities, including commercial and retail trading and liquor licensing, the approach has been to subject airport lessees to State and Territory regulations. The aim is to place on-airport businesses in a competitively neutral regulatory position with respect to businesses operating off-airport. In some cases, it was necessary for the Commonwealth to make regulations on these matters in order to ease the transition to the new arrangements under privatisation. Where possible, those transitional arrangements are being replaced with specific regulations enabling State laws to apply to the relevant subject matter. Where this has not been achievable, the Commonwealth is putting in place specific regulatory provisions to deal with the issue concerned on a permanent basis.

3.1.2.2 Introducing competition to airports

The framework established by the Government creates incentives for airport lessees to operate in a commercial manner, while still ensuring the public interest is protected. For example, responsibility for development of the airports rests entirely with lessees. The Master Planning provisions of the *Airports Act*, however, require lessees to publicly document their plans for future development of the airport — this ensures lessees are undertaking such planning and allows stakeholders and the community to provide input to these planning processes.

Through legislative and sales processes, the Government has put in place arrangements that will encourage competition between airports to the greatest extent possible. The *Airports Act* requires airlines not own more than 5 per cent of an airport operator company, and there are cross ownership restrictions of 15 per cent between Sydney airports (Kingsford Smith and Sydney West) and Melbourne, Brisbane and Perth airports.

The *Airports Act* contains special provisions to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with Part IIIA of the *Trade Practices Act 1974*. These provisions are designed to promote competition between businesses on the airport.

An economic regulatory regime has also been established, administered by the ACCC, to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years. The 'X' factor reflects expected productivity improvements at each airport. The ACCC is responsible for determining the X values, which range from 1.0 to 5.5.

A second element is price monitoring of aeronautical-related services. Aeronautical-related services are services outside the price cap where operators could exert significant market power at individual airports. The ACCC's role is to monitor the prices of these services and take action where appropriate.

A potential effect of the price cap is that a business operator could lower prices in line with the cap but also reduce costs by allowing the infrastructure to deteriorate. Complementary to the prices oversight regime is a 'quality of service' monitoring regime. Quality of service monitoring is designed as a check against such an outcome. It is not designed to compare airports but to monitor individual airport performance over time.

In October 2000, the Government announced that it will offer the shares in Essendon Airport Limited for sale. The sale process is expected to be completed in late August 2001.

The Government announced in December 2000 its decision to break up Sydney Airports Corporation Limited (SACL) and privatise it as two separate and competing companies. The Government aims to complete the sale of the company which operates Sydney (Kingsford Smith) Airport in the second half of 2001. In accordance with this timetable, a Clause 4 review of SACL is underway and is expected to be finalised in July 2001.

3.1.3 Former Australian Wheat Board

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

The former AWB's export control powers were transferred to a new statutory Wheat Export Authority, whose functions include monitoring and reporting on the use of the monopoly by the pooling subsidiary AWB (International) Ltd, which has been given an automatic right to export bulk wheat through the legislation. The Authority is required to review AWB (International) Ltd's performance in using the monopoly, before the end of 2004.

The legislation review governing these arrangements, the *Wheat Marketing Act 1989* commenced in April 2000 (see page 28), the terms of reference for that review require an examination of relevant matters in Clause 4 of the *Competition Principles Agreement* regarding structural reform of public monopolies.

4. Access to Essential Infrastructure

4.1 The importance of access to infrastructure

Fair and reasonable access by 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, 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.

For example, in July 1998, the Government announced a package of reforms in response to a NCC legislation review of the Australian Postal Corporation. Draft legislation to give effect to the Government's postal

reform package, which included a postal-specific access regime to be inserted into the *Trade Practices Act*, was introduced into Parliament on 6 April 2000. The legislation was scheduled to take effect from 1 July 2000. The draft legislation was subsequently withdrawn from Parliament as it did not attract the support necessary for passage.

4.2 Part IIIA of the *Trade Practices Act 1974*

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

- it would not be economically feasible to duplicate the facility;
- access to the service is necessary in order to permit effective competition in a downstream or upstream market;
- 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; and
- the safe use of the facility by the person seeking access can be ensured at economically feasible cost and, if there is a safety requirement, appropriate regulatory arrangements exist.

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 interjurisdictional impact or nature of the facility.

To give effect to this commitment, Part IIIA was inserted into the *Trade Practices Act 1974* (TPA). This part is referred to as the national access regime, and is intended to provide for minimum intervention by the Commonwealth in determining actual terms and conditions of access.

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

- declaration of the 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 is able to 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 decision on an application for declaration can be appealed to the Australian Competition Tribunal (ACT) within 21 days.

▪ through an undertaking to the ACCC; and

- 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.

▪ certification of a State or Territory access regime as an 'effective regime'.

- State or Territory governments may apply through the NCC to have an access regime certified as effective in relation to a particular service. The NCC then makes a recommendation to the relevant Commonwealth Minister on whether or not to certify the regime. In making a decision, the Minister must consider the NCC's recommendation and apply the relevant principles set out in the CPA.

- Where an effective State or Territory access regime is in place the relevant infrastructure service cannot be declared.

- A decision on an application for certification can be appealed to the ACT within 21 days.

Specific access regimes have also been established for particular infrastructure facilities, including those applying to telecommunications carriers, airport services provided at core regulated Commonwealth airports and for natural gas transmission and distribution pipelines. These regimes may or may not interact with the national access regime.

4.3 Commonwealth activity under Part IIIA

This section identifies those actions under Part IIIA of the TPA involving infrastructure facilities under Commonwealth jurisdiction or requiring a decision by a Commonwealth Minister during 1999-2000.

4.3.1 Western Australian access regime for natural gas pipelines

In November 1997, CoAG endorsed a uniform national access regime for natural gas transmission and distributional pipelines. As part of that agreement, each State and Territory government agreed to submit a regime consistent with the national regime, as it applied in their jurisdictions, through the NCC for certification under Part IIIA of the TPA.

On 15 March 1999, the NCC received an application from the Western Australian Government for certification of the Western Australian regime. The NCC provided the Minister for Financial Services and Regulation with its recommendation on 4 February 2000, supporting the application.

Having considered the recommendation, the Minister for Financial Services and Regulation certified the *Western Australian Third Party Access Regime for Natural Gas Pipelines* as an effective regime for a period of 15 years commencing on 31 May 2000.

5. Government Business Enterprises — Prices Oversight

5.1 The purpose of prices oversight

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

The Commonwealth has had its current prices oversight arrangements for public and private sector business activities under Commonwealth jurisdiction in place since 1983. However, there has been no comprehensive prices oversight of other jurisdictions' government enterprises. NCP aims to fill this void by encouraging the establishment of independent State and Territory prices oversight bodies.

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

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

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

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

5.2 Commonwealth prices oversight

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

The ACCC, an independent Commonwealth authority, is responsible for administering the *Prices Surveillance Act 1983*.

The *Prices Surveillance Act* enables the ACCC to undertake prices surveillance, price inquires or price monitoring of selected goods and services in the Australian economy. These powers can be applied to business activities of the Commonwealth, State and Territory authorities, as well as trading, financial and foreign corporations and people or firms within the Australian Capital Territory and across State and Territory boundaries.

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

In 1999-2000, prices surveillance was applied to aeronautical services at Sydney Airport, charges made by Airservices Australia for terminal navigation, en-route navigation and rescue and firefighting services and various Australia Post charges.

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

The responsible Commonwealth Minister may also request ongoing monitoring of prices, costs and profits in any industry or business. For example, in 1999-2000 the ACCC was required to undertake prices monitoring of all aeronautically related charges, and collect price, cost and profit data for container terminal operator companies in Australia's major ports and milk prices. The findings are also reported to the Minister.

The ACCC also has special pricing powers in relation to specific infrastructure facilities, for example, aeronautical services at privatised core regulated airports (see page 162).

5.2.1 Matters referred to the ACCC

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

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

- it is not already subject to a source of independent prices oversight advice;
- a jurisdiction which considers it is adversely affected by the lack of prices oversight has consulted the State or Territory that owns the GBE, and the matter has not been resolved to its satisfaction;
- the affected jurisdiction has then brought the matter to the attention of the NCC, and the NCC has decided that the condition in point (a) exists and that the pricing of the GBE's gas a significant direct or indirect impact on constitutional trade or commerce;
- the NCC then has recommended that the responsible Commonwealth Minister declare the GBE for prices surveillance by the ACCC; and

- the responsible Commonwealth Minister has consulted the State or Territory that owns the enterprise.

No matters were referred to the ACCC under these arrangements during 1999-2000.

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 ACCC.

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

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

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

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

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

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

- things done or authorised or approved by Federal or Territorial legislation other than legislation relating to patents, trademarks, designs or copyrights; and
- things done in any State or Territory specified in and specifically authorised by State or Territory legislation, as 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 76).

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

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

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

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

6.2.1 Existing legislation reliant on s.51(1)

The following legislation containing exception provisions has been previously identified:

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

- the Trade Practices Amendment (Country of Origin Representations) Act 1998; and

- the Year 2000 Information Disclosure Act 1999 (section 17), this Act has a sunset of 30 June 2001.

6.2.2 New Legislation: exceptions made in 1999-2000

There were no notifications of Commonwealth legislation made in reliance on section 51(1) in 1999-2000.

7. COAG Related Reforms (Electricity, Gas, Water, Road Transport)

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

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

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

7.1 Electricity

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

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

Key developments in electricity market reform during 1999-2000 included the following:

- *Retail Contestability*. New South Wales and Victoria have established processes to develop and implement market structures and rules to support the staged introduction of customer choice for households and small business consumers from January 2001. Processes have also been established to develop and implement nationally consistent structures and rules where appropriate.

- *Market Development*: The National Electricity Code Administrator (NECA) and the National Electricity Market Management Company (NEMMCO) initiated several important reviews and Code change processes to promote efficient market development. Key initiatives included work to: develop competitive arrangements for procuring ancillary services; improve locational pricing signals in the NEM; and to improve demand-side participation.

- *Network Development*. Several new transmission proposals and projects were advanced during the year including: the Basslink project (a 480MW non-regulated line between Tasmania and Victoria); the Queensland-NSW Interconnector (a 1,000MW regulated line between NSW and Queensland); Directlink (a 180MW non-regulated line between NSW and Queensland); Murraylink (a 200MW non-regulated line between Victoria and South Australia); and the South Australian-NSW Interconnector (a 275kV regulated line between NSW and South Australia). A revised public benefit test for new regulated transmission lines was implemented in December 1999, and is expected to encourage key transmission infrastructure investment.

- *Reform of Public Utilities*. South Australia leased its retail and distributional network assets and a generation business to the private sector for around $3.8 billion (the electricity asset leasing program was completed in September 2000 and yielded around $5.3 billion).

- *Tasmanian Entry into the NEM*. The Tasmanian Government announced the successful tenderer for the Basslink project and key environmental approval processes have commenced (completion of the Basslink project is a key trigger for Tasmania to enter the NEM). Tasmania initiated discussions with the Commonwealth, NEM jurisdictions and the ACCC regarding the legal requirements for entering NEM.

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

7.2 Gas

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

In February 1994, CoAG agreed to facilitate developments aimed at stimulating competition, thereby achieving '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 (GRIG) and its predecessor the Gas Reform Task Force, have focused primarily on developing and implementing national arrangements for third party access to natural gas pipelines.

In November 1997, the Commonwealth, States and Territories agreed to enact legislation to apply a uniform national framework for third party access to all gas pipelines.

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

7.2.1 Implementation of the Gas Access Regime

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

The National Competition Council (NCC) has given in-principle approval that the national regime is an 'effective' access regime for the purposes for Part IIIA of the *Trade Practices Act 1974*. Each jurisdiction is required to have its regime certified by the NCC. The Minister for Financial Services & Regulation certified Western Australia's regime on 31 May 2000.

Certification of jurisdictions' gas access regimes were delayed by the need for jurisdictions to amend their gas access legislation to address the High Court's decision of 17 June 1999 (*Wakim* decision). The decision held that the Constitution prevented State legislation conferring jurisdiction on the Federal Court even where Commonwealth and State legislation consented to such conferral.

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

7.2.2 Code changes

The Natural Gas Pipelines Access Agreement established the National Gas Pipelines Advisory Committee (NGPAC) to monitor and review the operation of the National Third Party Access Code for Natural Gas Pipeline Systems (the Code) and make recommendations to Ministers on changes to the Code. The Commonwealth through the Department of Industry, Science and Resources is represented on NGPAC and was instrumental during the year in having a number of operational changes accepted which should improve its operating efficiency.

By 30 June 2000, NGPAC had recommended seven Code change proposals to Ministers for approval. Three non-significant Code change proposals to rectify ambiguities and anomalies were approved by Ministers and gazetted on 23 December 1999.

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

The four significant Code changes, which NGPAC recommended to Ministers, involve:

- the inclusion of taxes within 'administrative costs' where a regulator is required to balance the private administrative costs against the public benefit when considering a waiver of ring fencing arrangements;

- expanding the definition of 'legal entity of a service provider' to include a foreign company;

- providing regulators with discretion to approve a service provider's revised access arrangement where the service provider has substantially incorporated the amendments specified by the regulator or satisfactorily addressed the matters identified by the regulator; and

- a requirement for a service provider to disclose end user information to a retailer, if requested to do so by the end user (important to facilitate end users changing to a different gas retailer).

7.2.3 Retail Reform

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

7.2.4 Gas Policy Forum

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

It is envisaged that the Forum will develop a gas policy framework which will set out measures to address outstanding reforms in the gas market and deliver outcomes consistent with the Government's energy and environmental objectives.

The first meeting of the Forum was held on 23 May 2000. At the meeting, members decided to address four priority issues in the work program for 2000-01. These are retail contestability in the gas market, regulation and access arrangements, competition in the upstream sector and convergence of gas and electricity into a national energy market.

7.2.5 Access arrangements

Under the Code, pipeline operators are required to submit an 'Access Arrangement' to the relevant regulator for approval. An Access

Arrangement specifies the maximum tariff that can be charged for transporting gas along a pipeline. Such reference tariffs are determined by the regulator, based on the initial capital base of the pipeline infrastructure and other parameters, following a public consultation process.

During 1999-2000, the ACCC released final decisions on the Access Arrangement for the Marsden to Dubbo transmission pipeline and the interconnect between Victoria and New South Wales. In NSW IPART issued final decisions on the Access Arrangement for the AGL distribution network and the Wagga Wagga and Albury distribution systems. In Western Australia, OffGAR issued the final decision on the Access Arrangement for the Mid West and South West AlintaGas distribution system.

In addition, the South Australian regulator issued a draft decision for Envestra's distribution network and the Western Australian regulator released a draft decision for the Parmelia transmission pipeline.

Throughout the year, several new access arrangements were submitted to relevant regulators for assessment.

7.3 Water

Water reform is a national priority that has implications for the future wellbeing of all Australians. Water is a critical element for life and its sustainable use is inextricably linked to the protection of water quality and environmental processes.

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

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

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

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

Progress in implementing the reforms has varied amongst jurisdictions and there is a need to maintain the reform momentum, particularly with respect to the establishment of clear property rights and the provision of water for ecosystems.

Pricing reforms are generally on target for urban water pricing and jurisdictions are progressing with the establishment of clearly defined mechanisms to achieve rural water pricing reforms. Priority now needs to be given to identifying and including the costs of resource management and environmental degradation into pricing.

Jurisdictions have made some progress in developing comprehensive systems of water allocations and entitlements to provide more secure property rights to water. Implementation is at varying stages of completion. Along with the separation of water entitlements from land title, these reforms provide the basis for the encouragement of water trading and the efficient use of water.

All jurisdictions have moved, or are moving, to implement the requirement to introduce institutional reforms that separate water resource management, standards setting, regulation and service provision.

While much of the responsibility for implementing the CoAG framework rests with individual jurisdictions, a High Level Steering Group (HLSG) comprising CEOs of several State Departments and a representative of

the Water Services Association of Australia, and chaired by the Secretary of AFFA, was formed in late 1998 by ARMCANZ to maintain the impetus of the reform process. The HLSG also identifies issues of particular concern across jurisdictions and sets up time-limited working groups to address those matters.

7.4 Road Transport

The national approach to road transport reform commenced in 1991 when CoAG signed the Heavy Vehicles Agreement and was extended in 1992 with the Light Vehicles Agreement. These agreements were given effect by the Commonwealth *National Road Transport Commission Act 1991*, which established the National Road Transport Commission (NRTC) to oversee development and implementation of the reform program under the direction of a Ministerial Council.

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

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

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

Governments were to phase in national reforms using 'template' legislation. This involved the Commonwealth enacting legislation (Commonwealth Road Transport Legislation) to apply the agreed reforms in the ACT, with other States and Territories applying the Commonwealth template 'by reference' in their own jurisdictions.

However, in February 1997, the Ministerial Council agreed that, in certain circumstances, jurisdictions could implement approved reforms without waiting for the Commonwealth template. This was intended to improve the timeliness and reduce the resource burden of reform implementation. This principle was included in *First Heavy and Light Vehicles Amending Agreements* which were scheduled to the *National Road Transport Commission Amendment Act 1998* and ratified in September 1999. These Amending Agreements preserved the concept of Commonwealth Road Transport Legislation, but allowed jurisdictions the flexibility to implement the legislation either by reference or by enacting its substance.

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

One of the reforms, Heavy Vehicle Charges, was assessed under the first tranche in 1997. However, in order to clarify the assessment of jurisdictions' observance of road transport reform, the CoAG Committee on Regulatory Reform asked that for the second and subsequent tranches, a comprehensive assessment framework with clear success criteria be developed and approved by CoAG and the Ministerial Council.

For the second tranche, a Standing Committee on Transport working group, chaired by the Commonwealth, developed an assessment framework, encompassing 19 reforms with implementation criteria and jurisdiction implementation target dates. The framework was then provided to the NCC and served as the basis for its second tranche assessments of road transport reform conducted in 1999. Throughout 1999-2000 this working group had developed a framework for the third tranche assessment including consulting industry on success criteria,

with the intention of seeking Ministerial Council and CoAG approval of the framework and providing it to the NCC by February 2001 to meet an assessment timeframe of June 2001.

Of the 19 reforms in the second tranche assessment framework, the Commonwealth was required to implement nine in relation to heavy vehicles registered in the Federal Interstate Registration Scheme (FIRS). Most of these were implemented in 1998-99. In 1999-2000, the Commonwealth implemented the following road transport reforms for FIRS vehicles:

- higher mass limits for tandem and triaxle vehicles; and
- gazettal of updated routes for B-doubles.

Commonwealth Legislation Review Schedule (as at 30 June 1999) — by scheduled commencement date

Table A1: Commonwealth Legislation review schedule

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

Table A1: Commonwealth Legislation review schedule (continued)

Name of legislation	Responsible department
1996-97	
Aboriginal Land Rights (Northern Territory) Act 1976	Prime Minister and Cabinet
Australian Maritime Safety Authority Act 1990	Transport and Regional Services
Australian Postal Corporation Act 1989	Communications, Information Technology and the Arts
Bills of Exchange Act 1909	Treasury
Customs Tariff Act 1995 — Automotive Industry Arrangements	Industry, Science and Resources
Customs Tariff Act 1995 — Textiles Clothing and Footwear Arrangements	Industry, Science and Resources
Duty Drawback (Customs Regulations 129 to 136B) and TEXCO (Tariff Export Concession Scheme) — *Customs Tariff Act 1995,* Schedule 4, Item 21, Treatment Code 421	Attorney-General's
Employment Services Act 1994 (case management issues*)*	Employment, Workplace Relations and Small Business
Foreign Investment Policy, including associated regulation	Treasury
Income Equalisation Deposits (Interest Adjustment) Act 1984 and Loan (Income Equalisation Deposits) Act 1976	Agriculture, Fisheries and Forestry
International Air Service Agreements	Transport and Regional Services
International Arbitration Act 1974	Attorney-General's
Migration Act 1958 — sub-classes 120 and 121 (business visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 560, 562 and 563 (student visas)	Immigration and Multicultural Affairs
Migration Act 1958 — sub-classes 676 and 686 (tourist visas)	Immigration and Multicultural Affairs
Migration Act 1958, Part 3 (Migration Agents and Immigration Assistance) and related regulations	Immigration and Multicultural Affairs
Migration Agents Registration (Application) Levy Act 1992 and *Migration Agents Registration (Renewal) Levy Act 1992*	Immigration and Multicultural Affairs
National Road Transport Commission Act 1991 and related Acts	Transport and Regional Services
Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and regulations	Foreign Affairs and Trade
Pooled Development Funds Act 1992	Industry, Science and Resources

Table A1: Commonwealth Legislation review schedule (continued)

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

Table A1: Commonwealth Legislation review schedule (continued)

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

Table A1: Commonwealth Legislation review schedule (continued)

Name of legislation	Responsible department
1998-99	
Land Acquisition Acts: *a) Land Acquisition Act 1989* and regulations*; b) Land Acquisitions (Defence) Act 1968; c) Land Acquisition (Northern Territory Pastoral Leases) Act 1981*	Finance and Administration
Marine Insurance Act 1909	Attorney General's
Navigation Act 1912	Transport and Regional Services
Proceeds of Crime Act 1987 and regulations	Attorney General's
Review of market-based reforms and activities currently undertaken by the Spectrum Management Agency (now Australian Communications Authority).	Communications, Information Technology and the Arts
Trade Practices *Act 1974* — Part X (shipping lines)	Transport and Regional Services
Veterans' Entitlement Act 1986 — Treatment Principles (section 90) and Repatriation Private Patient Principles (section 90A)	Veterans' Affairs
1999-00	
Defence Act 1903 (Army and Airforce Canteen Services Regulations)	Defence
Disability Discrimination Act 1992	Attorney General's
Dried Vine Fruits Legislation	Agriculture, Fisheries and Forestry
Export Control Act 1982 — Export Control (Unprocessed Wood) Regulations	Agriculture, Fisheries and Forestry
Export Finance & Insurance Corporation Act 1991 and *Export Finance & Insurance Corporation (Transitional Provisions and Consequential Amendments) Act 1991*	Foreign Affairs and Trade
Hazardous Waste (Regulation of Exports and Imports) Act 1989, Hazardous Waste (Regulation of Exports and Imports) Amendment Bill 1995 and related regulations	Environment and Heritage
Home & Community Care Act 1985	Health and Aged Care
Insurance (Agents & Brokers) Act 1984	Treasury
Native Title Act 1993 and regulations	Prime Minister and Cabinet
Ozone Protection Act 1989 and *Ozone Protection (Amendment) Act 1995*	Environment and Heritage
Petroleum (Submerged Lands) Act 1967	Industry, Science and Resources

Table A1: Commonwealth Legislation review schedule (continued)

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

Commonwealth Business Activities Subject to Competitive Neutrality (as at 30 June 1999) — progress implementing competitive neutrality

Table B1: Government Business Enterprises

Name	Progress
Australian Government Solicitor	Established as a GBE in September 1999; CN compliant.
Australian National Railways Commission	Business and assets sold and transferred in 1997-98, Commission was wound up in 2000.
Australian Postal Corporation	CN implemented. CN recommendations being considered.
Australian Rail Track Corporation	CN compliant.
Australian River Co Limited	Formerly known as Australian National Line Limited. Business activities sold during 1998-99
Australian Technology Group Limited	Partially privatised, Commonwealth equity holding to be divested
Comland	Paid all applicable State and Commonwealth taxes in 1999-2000. Borrows from the market at a commercial rate.
Defence Housing Authority	Tax equivalent payments to be made from July 2000. Debt neutrality arrangements should apply where required.
Employment National Limited, Employment National (Administration) Limited[23]	CN compliant.
Essendon Airport Limited	CN implemented, an appropriate rate of return target has not been established.
Health Services Australia Limited	CN compliant.
Medibank Private Limited	CN compliant.
Snowy Mountains Hydro-electric Authority	Corporatisation pending. Will be subject to taxes and debt will be re-financed on commercial terms.
Sydney Airports Corporation Limited	CN compliant. In December 2000, the Government announced its intention to privatise the company.
Telstra Corporation Limited	Partially privatised, CN compliant.

23 Employment National and its subsidiary are non-Government Business Enterprises *Corporations Law* companies.

Table B2: Commonwealth Business Units

Name	Progress
Australian Government Actuary	CN implementation under consideration.
Australian Government Analytical Laboratory	CN compliant.
Australian Protective Service	CN compliant.
Australian Valuation Office	CN compliant.
Commonwealth Rehabilitation Service	CN compliant.
Removals Australia	The sale of Removals Australia was finalised in January 2000.
Royal Australian Mint	CN compliant.

Table B3: Commercial Business Activities

Name	Progress
Aged Care Standards and Accreditation Agency	CN compliant.
Airservices Australia	No major CN issues.
Albury Wodonga Development Corporation (commercial services)	CN not implemented, Corporation being wound down.
Army and Air Force Canteen Service (retailing services)	No major CN issues.
Australian Broadcasting Corporation (consumer goods, studio rentals)	CN under implementation.
Australian Hearing Services	CN under implementation.
Australian National University (some teaching and consulting services)	CN under implementation.
Australian Wheat Board	Privatised as a grower owned and controlled company on 1 July 1999.
Commonwealth Scientific and Industrial Research Organisation (research, technical and consulting services)	CN compliant.
Export Finance and Insurance Corporation	CN implemented, guarantee charge has not been levied.
National Rail Corporation	CN compliant, sale pending.
Reserve Bank of Australia (financial services)	CN compliant.
Special Broadcasting Service (consumer goods)	CN implementation.

Legislation Review Terms of Reference

Aboriginal Land Rights (Northern Territory) Act 1976

The *Aboriginal Land Rights (Northern Territory) Act 1976* (the Act) was included in the Commonwealth Government's Legislation Review Schedule examining legislation that restricts competition.

1. Part IV of the Act is referred to the Review Body for evaluation and report within three months of the commencement of the review. The Review Body is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Review Body is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives.

    (a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches;

    (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business (including small business), and efficient resource allocation; and

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

3. In making assessments in relation to the matters in (2), the Review Body is to have regard to the analytical requirements for regulation assessment set out in the Competition Principles Agreement and

the Government's regulation impact statement guidelines. The report should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that Part IV of the Act seeks to address;

(b) clarify the objectives of Part IV of the Act;

(c) identify whether, and to what extent Part IV of the Act restricts competition;

(d) identify relevant alternatives to Part IV of the Act, including non-legislative approaches that improve free competition;

(e) identify the different groups likely to be affected by Part IV of the Act and alternatives;

(f) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Part IV of the Act and alternatives identified in (d);

(g) list the individuals and groups consulted during the review and outline their views and what stakeholding they enjoy;

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

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

4. In undertaking the review, the Review Body is to advertise the review in national newspapers and the NT News, consult with key interest groups and affected parties, taking into account relevant outcomes of the Reeves review, and publish a report.

Australia New Zealand Food Authority Act 1991 Food Standards Code

1. The Food Standards Code (the Code) is referred to the Food Standards Code Review Committee (the Review Committee) for evaluation and report by early September 2000. The Review Committee is to focus on those parts of the Code which restrict competition, or which impose costs or confer benefits on business.

2. The Review Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following:

   (a) provisions in the Code (provisions) which restrict competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the regulation can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self-regulation;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

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

   (d) there should be explicit assessment of the suitability and impact of any provisions, and justification of their retention if they remain as referenced standards; and

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

3. In making assessments in relation to matters in (2), the Review Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the *Competition Principles Agreement*. The report should:

   (a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Code seeks to address;

   (b) clarify the objectives of the Code;

   (c) identify whether, and to what extent, individual provisions restrict competition;

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

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of regulation and alternatives identified in (d);

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

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

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

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

4. In undertaking the review, the Review Committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

5. In undertaking the review and preparing its report and associated recommendations, the Review Committee is to note the Government's intention to announce its response to the recommendations, after obtaining advice from the Managing Director and, where appropriate, after consideration by Cabinet.

Export Control (Unprocessed Wood) regulations under the *Export Control Act 1982*

1. The following Regulations made under the *Export Control Act 1982* are referred to the Review Committee (the Committee) for evaluation and report by 31 December 2000:

   - Export Control (Unprocessed Wood) Regulations;
   - Export Control (Hardwood Wood Chips) Regulations 1996; and
   - Export Control (Regional Forest Agreements) Regulations.

2. The Committee is to focus on those parts of the Regulations which restrict competition or which impose costs or benefits on business.

3. The Committee is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) regulations which restrict competition should be retained:

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

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on:

   - competitiveness of business;
   - economic and regional development;
   - efficient resource allocation;

- consumer interests;
- welfare and equity;
- occupational health and safety; and
- the environment.

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

(d) compliance costs and the paperwork burden on small business should be reduced where feasible.

4. In making assessments in relation to matters in (2), the Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Committee should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the Regulations seek to address;

(b) identify whether, and to what extent, the Regulations restrict competition;

(c) identify relevant alternatives to the Regulations, including non-legislative approaches;

(d) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the Regulations and the alternatives identified in (c);

(e) identify the different groups likely to be affected by the Act and alternatives;

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

(g) determine the preferred option for regulation, if any, in light of objectives set out in (3);

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

5. In undertaking the review, the Committee is to advertise nationally, consider any submissions received from interest groups and affected parties and publish a report.

6. Within 6 months of receiving the Committee's report, the Government intends to announce what action is to be taken, after obtaining advice from the Minister and where appropriate, after consideration by Cabinet.

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

Productivity Commission Act 1998

I, PETER COSTELLO, Treasurer, under Parts 2 and 3 of the *Productivity Commission Act 1998* and in accordance with the Commonwealth Government's Legislation Review Schedule, hereby refer the *Broadcasting Services Act 1992, Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992, Radio Licence Fees Act 1964* and the *Television Licence Fees Act 1964* ('the legislation') to the Productivity Commission for inquiry and report within twelve months of receiving this reference. The Commission is to hold hearings for the purpose of the Inquiry.

Background

2. The *Broadcasting Services Act 1992, and the Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992* govern a diverse range of radio and television services for entertainment, educational and information 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.

3. 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 radiofrequency spectrum. Fees are based on the advertising revenue of commercial broadcasters.

Scope of the inquiry

4. The Commission is to advise on practical courses of action to improve competition, efficiency and the interests of consumers in broadcasting services. In doing so, the Commission should focus particular attention on balancing the social, cultural and economic dimensions of the public interest and have due regard to the phenomenon of technological convergence to the extent that it may impact upon broadcasting markets.

5. In making assessments in relation to matters in (4), the Commission is to have regard to the Commonwealth's analytical requirements for regulation assessment, including those set out in the Competition Principles Agreement, which specifies that any legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives can be met only through restricting competition. The report of the Commission should:

(a) identify the nature and magnitude of the social and economic problems that the legislation seeks to address;

(b) clarify the objectives of the legislation;

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

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

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and alternatives identified in (d);

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

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

(h) determine a preferred option for regulation, if any, in light of the objectives set out in (4);

(i) examine mechanisms for increasing the overall efficiency of the legislation and, where it differs, the preferred option.

6. In undertaking the review, the Commission is to advertise nationally, consult with key interested groups and affected parties, and release a draft report. The Government will release and respond to the final report produced by the Commission within six months from the date it is received.

PETER COSTELLO

Review of Cost Recovery by Commonwealth Agencies

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 and 3 of the Productivity Commission Act 1998, hereby refer the cost recovery arrangements of Commonwealth Government regulatory, administrative and information agencies — including fees charged under the *Trade Practices Act 1974* (TPA) — to the Commission for inquiry and report within twelve months of receipt of this reference. The Commission is to hold hearings for the purpose of the inquiry.

Background

2. This inquiry is principally a general review of cost recovery arrangements across Commonwealth regulatory, administrative and information agencies. In addition, the inquiry will incorporate the review of fees charged under the TPA which is required under the Commonwealth Legislation Review Schedule. The inquiry will take into account the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement, where relevant.

Scope of inquiry

3. The Commission is to report on:

   (a) the nature and extent of cost recovery arrangements across Commonwealth Government regulatory, administrative and information agencies, including identification of the activities of those agencies for which cost recovery is undertaken;

   (b) factors underlying cost recovery arrangements across Commonwealth Government regulatory, administrative and information agencies;

   (c) who benefits from the regulations, administrative activity and information to which cost recovery arrangements are applied;

(d) the impact on business, particularly small business, consumers and the community of existing cost recovery arrangements, including any anti-competitive effects and incentive effects;

(e) the impact of cost recovery arrangements on regulatory, administrative and information agencies, including incentive effects;

(f) the consistency of cost recovery arrangements with regulatory best practice;

(g) appropriate guidelines for:

i) where cost recovery arrangements should be applied;

ii) whether cost recovery should be full, partial or nil;

iii) ensuring that cost-recovered activities are necessary and are provided in the most cost-effective manner;

iv) the design and operation of cost recovery arrangements, including the treatment of small business;

v) the review of cost recovery arrangements; and

vi) where necessary, implementation strategies to improve current arrangements.

4. In reporting on matters in 3 above, the Commission should, where relevant, have regard to:

(a) implications of recent and emerging technologies; and

(b) legal constraints on the design and operation of cost recovery arrangements.

5. With respect to fees charged under the TPA, the Commission should have particular regard to:

(a) Those fees charged that restrict competition, or which impose costs or confer benefits on business; and

(b) Whether cost recovery arrangements that restrict competition should be retained in whole or in part, taking into account whether the benefits to the community as a whole outweigh the costs, and whether the objectives of those arrangements can be achieved only by restricting competition.

6. In making its assessment of fees charged under the TPA:

(a) the Commission is to have regard to environmental, welfare and equity considerations; economic and regional development; occupational health and safety; consistency between regulatory regimes and efficient regulatory administration; the interests of consumers generally; the competitiveness of business including small business; compliance costs and the paperwork burden on small business; and the efficient allocation of resources; and

(b) the Commission should;

i) identify the rationale for fees charged under the TPA;

ii) clarify and assess the objectives of the fee arrangements;

iii) identify whether, and to what extent, the fee arrangements impose costs or confer benefits on business or restrict competition;

iv) identify any relevant alternatives to these fee arrangements;

v) analyse and, as far as reasonably practical quantify the benefits, costs and overall effects of the arrangements and alternatives identified in (iv);

vi) identify the different groups likely to be affected by these arrangements and alternatives;

vii) list the individuals and groups consulted during the review and outline their views;

viii) determine a preferred option for the fee arrangements, if any; and

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

7. The Commission should take account of any recent substantive studies relevant to the above issues.

8. In undertaking the review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and produce a report.

9. The Government will consider the Commission's recommendations, and the Government's response will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP

Financial Transaction Reports Act 1988 & regulations

The Taskforce is to review the *Financial Transaction Reports Act 1988* and Financial Transaction Reports Regulations for the purposes of the Commonwealth Legislation Review Program under which legislation which restricts competition or imposes costs, or which confers benefits on business is to be reviewed.

The Taskforce is to examine and report on:

1.

(a) whether and to what extent the legislation impacts on business by restricting competition or imposing costs or conferring benefits on business;

(b) appropriate arrangements for regulation, if any, taking into account the following:

i) legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can be achieved only by restricting competition; and

ii) effects on: criminal activity, including money laundering; economic and regional development; consumer interests; competitiveness of business, including small business; and efficient resource allocation;

(c) whether compliance costs can be reduced, including compliance costs and paperwork burden on small business; and

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

2. In undertaking the examination the Taskforce is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The Taskforce should:

   (a) identify the problem the *Financial Transaction Reports Act 1988* and the Financial Transaction Report Regulations seek to address;

   (b) clarify the objectives of the Act and Regulations;

   (c) identify the nature of any restrictions that the Act or Regulations places on competition;

   (d) analyse the likely effect of the restriction on competition and on the economy generally;

   (e) consider alternative means for achieving the same result including non-legislative approaches;

   (f) assess and as far as reasonably practicable, quantify the costs and benefits of the requirements and overall effects of the legislation and alternatives identified in (e);

   (g) identify the major groups likely to be affected by the Act and Regulations and alternatives, and list individuals and groups consulted during the review and outline their views or reasons why consultation was inappropriate; and

   (h) examine mechanisms for increasing the overall efficiency, including minimising compliance costs and paper burden on small business, of the Financial Transaction Reports Act and Regulations, and where it differs, the preferred option.

In undertaking the examination the Taskforce is to advertise nationally, consult widely with key interest groups and publish a report.

The Taskforce review will present its report and recommendations to the Government within six months. The Government intends to announce its response to recommendations within six months of receiving the report.

Hazardous Waste (Regulation of Imports & Exports) Act 1989

1. The *Hazardous Waste (Regulation of Exports and Imports) Act 1989* (the legislation) is referred to a Taskforce of Officials (the Taskforce) for evaluation and report by 30 November 2000. The Taskforce is to focus on those parts of the legislation which affect competition, or which impose costs or confer benefits on business.

2. The Taskforce of Officials is to take into account the following objectives:

   (a) the legislation and associated regulations which restrict competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation and associated regulations can be achieved only by restricting competition. Alternative approaches which may not restrict competition include quasi-regulation and self regulation;

   (b) in assessing the matters in (a), regard should be given, where relevant, to effects on the environment and human health, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

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

   (d) there should be explicit assessment of the suitability and impact of any standards referenced in the legislation, and justification of their retention if they remain as referenced standards;

   (e) compliance costs and the paperwork burden on small business should be reduced where feasible; and

(f) Australian compliance with the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal (the Basel Convention) including agreements and arrangements made under Article 11 of the Convention.

3. In making assessments in relation to the matters in (2), the taskforce should have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement. The report of the Taskforce should:

(a) identify the nature and magnitude of the social, environmental or other economic problem(s) that the legislation seeks to address;

(b) clarify the objectives of the legislation;

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

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

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the legislation and alternatives identified in (d) and any identified alternative means of compliance with the Basel Convention including Article 11 agreements and arrangements, taking into account relevant developments in hazardous waste management;

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

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

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

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

(j) In undertaking the review, the Taskforce is to advertise nationally, consult with key interest groups and affected parties, and publish a report.

Within four months of receiving the Report of the Taskforce, the Government intends to announce what action is to be taken, after obtaining advice from the Minister for the Environment and Heritage and, where appropriate, consideration by Cabinet.

Health Insurance Act 1973 — Part IIA (Pathology Collection Centre Licensing Scheme)

The Commonwealth legislation that relates to the provision of pathology services under Medicare ('the legislation') as attached, are referred to the pathology legislation review committee for inquiry and report to the Minister for Health and Aged Care by 31 December 2000.

1. The Pathology Legislation Review Committee is to:

(a) identify and describe the nature and the magnitude of the social, environmental, economic and other issues that the legislation seeks to address;

(b) clarify the objectives of the legislation;

(c) identify the groups likely to be affected by the legislation;

(d) identify and set out any alternative mechanisms that may be available to achieve the objectives of the legislation, as identified in 1(b), and the groups likely to be affected by the alternatives;

(e) for the legislation and its alternatives, analyse and where possible, quantify the costs, benefits and overall impact on these groups including:

i) administrative processes that are required;

ii) quality reference standards established;

iii) compliance costs associated with meeting the various requirements; and

iv) any aspects which restrict competition;

(f) if new problems have become apparent, assess these problems in accordance with the regulatory best practice requirements;

(g) prepare a report in relation to the legislation in light of the inquiry conducted, which includes but is not limited to:

i) recommendations relating to the legislation and its impact on the relevant groups identified in 1(c) and 1(d) above;

ii) an outline of the basis for any recommendation which is related to quality reference standards in the legislation;

iii) a preferred framework for regulation, if any, in light of the objectives set out in 1(b);

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

v) mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the legislation relating to pathology and, where it differs, the recommended framework.

2. In undertaking this inquiry and preparing the report, the Pathology Legislation Review Committee shall have regard to:

(a) the broader intentions and policies of the Commonwealth Government in relation to the provision of health services to

ensuring that all Australians have access to appropriate, cost effective, quality care based on need;

(b) developments in communications and information technology and their potential in terms of the provision of pathology services under Medicare;

(c) in respect of the pathology industry (now and in the future) including:

i) compliance costs (including the paper work burden on small business) should be reduced where feasible;

ii) opportunities to improve administrative requirements to provide for compliance needs and business processes to be coordinated where possible; and

iii) approaches which assist the pathology industry to operate within a capped expenditure environment.

(d) the broader policy objectives of the Commonwealth Government in relation to competition policy:

i) legislation/regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and if the objectives of the legislation/regulation can be achieved only by restricting competition;

ii) consideration should be given, where relevant, to effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation;

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

iv) the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement.

3. The review committee is to advertise nationally, consult with key interest groups and affected parties, and publish a report following Ministerial clearance.

4. In undertaking the review and preparing its report and associated recommendations, the review committee is to note the Government's intention to announce its response to the recommendations, after obtaining advice from the Minister and, where appropriate, after consideration by Cabinet.

Intellectual Property Protection Legislation (Designs Act 1906, Patents Act 1990, Trade Marks Act 1995, Copyright Act 1968 and *Circuit Layouts Act 1989*)

1. The committee shall inquire into and report to the Attorney-General and the Minister for Industry, Science and Resources by 30 June 2000 on:

(a) the objectives of, including the nature and magnitude of the problems sought to be addressed by:

i) the *Copyright Act 1968*;

ii) the *Designs Act 1906*;

iii) the *Patents Act 1990*;

iv) the *Trade Marks Act 1995*;

v) the *Circuit Layouts Act 1989;*

vi) any regulations made under the Acts referred to in (i) to (v);

(b) the nature of the restrictions in the legislation on competition;

(c) the likely effects of those restrictions on competition, businesses, including small businesses, and the economy generally;

(d) whether there are alternative, including non-legislative, means for achieving the objectives referred to in (a);

(e) the costs and benefits to businesses, including small businesses, and the economy generally of:

i) the restrictions referred to in (b); and

ii) the legislation overall referred to in (a);

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

(f) the appropriateness, effectiveness and efficiency of:

i) the legislation referred to in (a) and regulations made thereunder;

ii) the administration established under that legislation; and

iii) any identified relevant alternatives to the legislation, including non-legislative approaches, in achieving the objectives of the legislation.

2. In undertaking the inquiry and preparing the report referred to in (1), the committee shall have regard to:

(a) the determination, in the Competition Principles Agreement that legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation can only be achieved by restricting competition;

(b) the intentions and policies of the Government as expressed in statements made or authorised by responsible Ministers in relation to the legislation referred

to in (1)(a), including amendments approved and announced but not yet enacted;

(c) the obligations under international treaties that relate to the subject matter of the legislation referred to in (1)(a) and of which Australia is a member country or may become a member country;

(d) the conclusions and recommendations in recent reviews affecting the legislation referred to in (1)(a) that have not yet been responded to by the Government including, but not limited to:

i) the report by the National Competition Council entitled *Review of sections 51(2) and 51(3) of the Trade Practices Act 1974*;

ii) the report of the Copyright Law Review Committee entitled *Simplification of the Copyright Act 1968*;

(e) the views conveyed to it by any current review affecting the legislation referred to in (1)(a).

3. In undertaking the inquiry and preparing the report referred to in (1), the committee shall:

(a) advertise the Terms of Reference nationally;

(b) consult with stakeholders and invite submissions from all interested parties;

(c) hold hearings to afford interested parties the opportunity to make oral submissions;

(d) invite the views of any review referred to in (2)(e); and

(e) note the possibility that its report may be published.

Review of the Ozone Protection Act 1989 and Associated Acts and Regulations

1. The *Ozone Protection Act 1989*, the *Ozone Protection (Licence Fees — Imports) Act 1995* and the *Ozone Protection (Licence Fees — Manufacture) Act 1995* together with associated acts and regulations ('the Legislation'), are referred to a Task Force of Officials ('the Task Force') for evaluation and report by the end of December 2000.

2. As a signatory to the *Vienna Convention for the Protection of the Ozone Layer 1985* and the *Montreal Protocol on Substances that Deplete the Ozone Layer 1987*, Australia has made an international commitment to control the consumption and production of ozone depleting substances (ODS). Responsibility for implementing this control is shared between the Commonwealth, State and Territory Governments. Under present arrangements, the Commonwealth controls import, manufacture and export of ODS, while the States and Territories control sale, distribution and use of ODS within Australia.

3. The Task Force is to assess the appropriateness, effectiveness and efficiency of the Legislation, recognising Australia's international obligations under the *Vienna Convention* and *Montreal Protocol*. Matters to be addressed will include, but not necessarily be limited to:

    (a) the policy objectives of the Legislation and the extent to which those objectives remain appropriate, including the nature and magnitude of the social, environmental and economic problem that the legislation seeks to address. In particular:

        i) the effectiveness of the Legislation in facilitating Australia's compliance with the *Vienna Convention* and the *Montreal Protocol*, including the London Amendment and Adjustment (1990), the Copenhagen Amendment and Adjustment (1992), the Vienna Adjustment (1995), the Montreal

Amendment and Adjustment (1997), the Beijing Amendment and Adjustment (1999);

ii) the degree to which the Legislation, operating in conjunction with relevant regulations made under the *Customs Act 1901* and relevant State and Territory legislation, has been effective in reducing the consumption and production of ODS in Australia;

(b) the scope of the objects of the legislation, including whether the legislation should control the consumption and production of alternatives to ODS and if so to what extent;

(c) the impact, if any, the legislation has on the environment, welfare, equity, health, safety, economic and regional development, consumer interests, the competitiveness of business including small business, and efficient resource allocation. To the extent possible, the Task Force should quantify the costs and benefits to the community and industry of the Legislation in achieving its objectives. In particular, the Task Force should identify:

i) the different groups affected by the legislation;

ii) any impediment to competition that the legislation imposes, including the costs and benefits of those restrictions on the economy generally;

iii) the extent to which the legislation affects the international competitiveness of Australian business;

iv) the impact of the Legislation on international trade in general. For example, the effect on levels of imports by Australian businesses, and the effect on export opportunities for Australian business;

v) the level of compliance costs for industry and administrative costs to the Government, the impact

on small business and ways to reduce the compliance and paperwork burden;

(d) the arrangements for administration and enforcement of compliance with the Legislation, including the effectiveness and efficiency of these arrangements in relation to achieving objectives and client service;

(e) the level of fees, fee structures and cost recovery arrangements and the extent to which they are adequate to facilitate achievement of the policy objectives; and

(f) the clarity and simplicity of the legislation and the ease with which affected parties can determine obligations and processes created.

4. The report of the Task Force is to cover the matters referred to in paragraph 3 and in addition, is to:

(a) identify feasible alternatives to the Legislation, including non-legislative approaches;

(b) identify the different groups likely to be affected by these alternatives;

(c) analyse and, as far as reasonably practicable, quantify the benefits, costs and overall effects of the alternatives identified; and

(d) recommend a preferred course of action.

5. The Task Force is to have regard to:

(a) the Competition Principles Agreement between Australian governments;

(b) Commonwealth requirements for regulation assessment;

(c) any recent government reports related to the legislation, for example, the draft report on the ANZECC Review of the National Ozone Protection Program (October 1999) and the

Evaluation of the Commonwealth's Ozone Protection Program (November 1995).

6. The Task Force should, in making its report, also consider:

(a) international developments in ozone protection and related environment protection issues such as climate change and management of hazardous wastes;

(b) current and emerging industry trends and practices, including development of new technology in relevant sectors;

(c) whether there is any inconsistency between the legislation and other regulatory regimes that gives rise to unnecessary duplication of effort for business; and

(d) whether, and if so how, it would be feasible to reduce compliance costs and the paper work burden on small business.

7. In undertaking the Review, the Task Force is to advertise nationally for submission from affected parties, consult with key interest groups and affected parties and outline their views, and publish a report containing its recommendations. The Government intends to announce its response to the recommendations within 6 months of receiving the report.

Marine Insurance Act 1909

I, DARYL WILLIAMS, Attorney-General of Australia, acting pursuant to section 20 of the *Australian Law Reform Commission Act 1996* refer the following matter to the Australian Law Reform Commission:

The Marine Insurance Act 1909 (the Act).

1. In carrying out its review of the Act the Commission should comply with the requirements set out in sections 21 and 24 of the *Australian Law Reform Commission Act 1996* and the Commonwealth requirements for regulation assessment, including those set out in the Competition Principles Agreement. The Commission must report on the appropriate arrangements for regulation, if any, taking into account the following:

   (a) any part of the legislation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation can be achieved only by restricting competition;

   (b) the desirability of having a regime consistent with international practice in the marine insurance industry, noting in particular that the Act is based very closely on the *Marine Insurance Act 1906* (UK), and whether any change to the Act might result in a competitive disadvantage for the Australian insurance industry;

   (c) the effects on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business, including small business and efficient resource allocation; and

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

2. The Commission in its report should also:

(a) identify the nature and magnitude of the social, environmental and economic problems that the Act seeks to address;

(b) clarify the objectives of the Act;

(c) assess alternatives, including non-legislative alternatives to the Act;

(d) analyse, and as far as reasonably practicable, quantify the benefits, costs and overall effects of the Act and any proposed alternatives to it.

3. The Commission must invite submissions from the public and hold public hearings.

4. The Commission is to draft any appropriate legislation and explanatory memorandum to give effect to the recommendations in its report under this reference.

5. The Commission is to report not later than 31 December 2000.

Navigation Act 1912

The *Navigation Act 1912*, except for Part VI of the Act dealing with the coastal trade, is referred to a review team for evaluation and report by 1 July 2000. The review team is to focus on those parts of the legislation that restrict competition or trading opportunities, are anachronistic or redundant, or which impose costs or confer benefits on business. Part VI is excluded from the review as it has been the subject of a separate review process.

The review team will:

- identify the nature and magnitude of safety, environmental, economic and social issues that the *Navigation Act 1912* seeks to address;

- clarify the objectives of the Act and their appropriateness in terms of the objectives for modern shipping regulation;

- identify the nature and extent of restrictions on competition contained in the Act;

- identify relevant alternatives to the Act including non-legislative approaches;

- analyse and, as far as practicable, quantify the benefits and costs and the overall effects of the Act and the alternative approaches identified above;

- identify the groups likely to be affected by the legislation and alternatives, list the groups and individuals consulted and outline their views; and

- make recommendations on preferred options for legislative or non-legislative measures to meet the identified objectives.

In assessing these matters and making recommendations, the review team will take into account:

- Australia's rights, obligations and duties under the UN Convention on the Law of the Sea and relevant conventions and resolutions of competent international organisations;

- the objective that regulation which restricts competition should be retained only if the benefits to the community as a whole outweigh the costs and where the objectives of the Act can only be achieved by restricting competition;

- the need to reduce where feasible compliance costs and the paperwork burden on business, particularly small business.

In undertaking the review, the review team is to advertise nationally the fact of the review, identify and seek submissions from interested parties likely to be affected by the Act, consult with key interest groups and affected parties and prepare a report for publication.

The review team will provide a progress report by 17 December 1999, with a final report to be presented by 1 July 2000. The review team will ensure that within 2 weeks of the report being finalised, it is forwarded

to the Minister with a recommendation that the report be forwarded to the Treasurer to satisfy competition policy requirements.

Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 & Regulations

1. The *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993*, and associated regulations, are referred to a Committee of Officials for evaluation and report before July 1997. The Committee of Officials is to focus on those parts of the legislation which restrict competition, or which impose costs or confer benefits on business.

2. The Committee of Officials is to report on the appropriate arrangements for regulation, if any, taking into account the following objectives:

   (a) legislation/regulation should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation/regulation can not be achieved more efficiently through other means, including non-legislative approaches;

   (b) in assessing the matters in (a), regard should be had, where relevant, to effects on economic and regional development, the competitiveness of business, including small business, and efficient resource allocation;

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

3. In making assessments in relation to the matters in (2), the Committee of Officials is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement, as outlined in the 'Guide for Regulation Impact Statements' (attachment D). The report of the Committee of Officials should:

   (a) identify the nature and magnitude of the social or other economic problems in the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* seeks to address;

   (b) clarify the objectives of the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993*;

   (c) identify whether, and to what extent, the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* restricts competition;

   (d) identify relevant alternatives to the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993*, including non-legislative approaches;

   (e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and alternatives identified in (d);

   (f) identify the different groups likely to be affected by the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and alternatives;

   (g) list the individuals and groups consulted during the review and outline their views;

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

(i) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of the *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and, where it differs, the preferred option.

4. In undertaking the review, the Committee of Officials is to consult with affected parties and publish a report.

5. Within 3 months of receiving the Committee of Officials' report, the Government intends to announce what action is to be taken, after obtaining advice from relevant Ministers and where appropriate after consideration by Cabinet.

Australian Law Reform Commission Act 1996

I, DARYL WILLIAMS, Attorney General of Australia, HAVING REGARD TO:

(a) the importance of effective provision for forfeiture of the proceeds of crime to Australia's efforts to counter serious crime;

(b) Australia's obligations under international law, including under —

- The 1998 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; and
- Bilateral treaties dealing with mutual assistance in criminal matters;

(c) the proposed ratification by Australia of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime;

(d) the need for proceeds laws in Australia that enable reciprocal assistance to be granted on request by other countries with respect to the tracing, restraining and forfeiture of proceeds;

(e) the responsibility of the Commonwealth to respect and maintain human rights and civil liberties on the one hand and protection of the community by effective and appropriate law enforcement measures on the other hand;

(f) the need to make provision for the fair, prompt and effective resolution of disputes and other issues arising in the course of the restraining and forfeiture process without imposing time limits that create difficulties in relation to the continuing workload of the courts;

(g) the operation since enactment of the *Proceeds of Crime Act 1987*, the *Crimes (Superannuation Benefits) Act 1987* (Cth), the *Crimes (Superannuation Benefits) Act 1989* (Cth) and Part VA of the *Australian Federal Police Act 1979* (Cth); and

(h) the various laws of the Australian States and Territories with respect to the forfeiture of the proceeds of crime and any relevant experience of the operation of those laws.

IN PURSUANCE of section 20 of the *Australian Law Reform Commission Act 1996*, HERBY REFER to the Australian Law Reform Commission for inquiry and report the *Proceeds of Crime Act 1987* (Cth), the *Crimes (Superannuation Benefits) Act 1989* (Cth) and Part VA of the *Australian Federal Police Act 1979* (Cth).

The Commission is to have regard to the matters set out above, and, in particular, is to inquire into and report on:

(1) the need for appropriate recognition of rights of third parties, including on forfeiture of jointly owned property and the relationship of forfeiture of assets to rights of secured and unsecured creditors, including, in event of bankruptcy of a person charged with or convicted of a serious Commonwealth offence, and the effect of such bankruptcy on the forfeiture process;

(2) the relationship of forfeiture of proceeds of a crime to the possibility of compensation of, or restitution to, a victim of the same crime and whether Commonwealth legislation should make provision for such compensation or restitution where forfeiture of proceeds is sought;

(3) the control of restrained assets and the prevention of unreasonable dissipation of restrained assets on legal expenses;

(4) existing provisions in Commonwealth law for non-conviction-based (*in rem*) forfeiture, and whether Commonwealth law should be modified in that regard; and whether the civil forfeiture regime of Division 3 of Part XIII of the *Customs Act 1901* should be integrated into the Proceeds of Crime Act;

(5) possible legislation to cover 'literary proceeds';

(6) the adequacy of, and any need and justification for expansion of, police powers to obtain information from financial institutions for purpose of locating proceeds; and

(7) existing provisions for loss of Commonwealth superannuation entitlements and benefits following conviction for a 'corruption offence' and whether there is any need for change in the existing law.

IN PERFORMING its functions in relation to the reference, the Commission is to consult widely among the Australian community, with the Australian Federal Police, the Director of Public Prosecutions, the National Crime Authority and other relevant Commonwealth, State and Territory authorities and with relevant non-government organisations.

THE COMMISSION IS REQUIRED to report not later than 31 December 1998.

Dated 7 December 1997

Daryl Williams
Attorney-General

Proceeds of crime — alternations of terms of reference

I, DARYL WILLIAMS, Attorney-General of Australia, HAVING REGARD TO:

- the reference entitled 'Proceeds of Crime' (the reference) given to the Australian Law Reform Commission on 7 December 1997; and

- the desirability of the reference including a consideration of the impact of the *Proceeds of Crime Act 1987* on business.

IN PURSUANCE of subsection 20(2) of the *Australian Law Reform Commission Act 1996* hereby alter the reference as follows:

(a) the Commission is also to inquire into and report on the additional matter of the impact of the *Proceeds of Crime Act 1987* on business; and

(b) in performing its functions in relation to that additional matter, the Commission is to have regard to:

    i) the requirements for legislation review set out in the Competition Principles Agreement; and

ii) the requirements for regulation assessment as outlined in the statement by the Prime Minister, the Hon John Howard MP, 'More Time for Business' (24 March 1997) and the document 'A Guide to Regulation' (October 1997).

NOTING that the reporting date of the reference issued on 7 December 1997 is and remains 31 December 1998, I direct that the Commission is required to report in respect of the additional matter listed above not later than 31 December 1998.

Dated 14 April 1998

Daryl Williams
Attorney-General

Trade Practices Act 1974 — subsections 51(2) and 51(3) (exemption provisions)

I, PETER COSTELLO, hereby in accordance with the Commonwealth Government's Legislation Review Schedule, refer to the National Competition Council subsections 51(2) and 51(3) (exemption provisions) of the *Trade Practices Act 1974* (TPA) for inquiry and report within nine months of receipt of this reference.

(1) To meet the requirements of the Competition Principles Agreement (CPA), legislation/regulation which restricts competition should only be retained if the benefits to the community as a whole outweigh the costs, and if the objectives of the legislation/regulation cannot be achieved more efficiently through other means, including non-legislative approaches.

(2) In undertaking this review the Council should have regard to:

(a) relevant Federal and State industrial relations legislation and international agreements relating to labour that recognise collective bargaining;

(b) the common law doctrine of restraint in relation to restrictive covenants pertaining to employment, partnership, and the protection of goodwill in the sale of a business;

(c) standards made by the Standards Association of Australia;

(d) the Government's obligations under intellectual property treaties and conventions arising from Australia being a signatory to various International Intellectual Property Agreements and Conventions, including the World Trade Organisation Agreement on Trade-Related Aspects of Intellectual Property Rights;

(e) Australian intellectual property legislation including the *Copyright Act 1968*, the *Designs Act 1906*, the *Patents Act 1990*, the *Trade Marks Act 1995*, the *Circuit Layouts Act 1989* and the *Plant Breeder's Rights Act 1994*;

(f) other nations' experience with provisions similar to s51(2) and s51(3) of the TPA (ie provisions that provide/allow for specific exemptions from the application of general competition laws);

(g) consequential effects that the exemption provisions have through the Competition Code in each State and Territory; and

(h) any other matters the Council considers relevant to the inquiry.

(3) The Council is to have regard to the analytical requirements for regulation assessment by all Australian governments set out in the CPA. Without limiting the scope of the reference, the final report from the Council should:

(a) identify the nature and, as far as reasonably practical, the magnitude of the social and economic problems that subsections 51(2) and 51(3) (exemption provisions) of the TPA seek to address;

(b) clarify the objectives of the exemption provisions and determine whether these objectives continue to be relevant;

(c) identify whether, and to what extent, the exemption provisions allow certain individuals/corporations to engage in specific anti-competitive conduct that may otherwise be prohibited by the general prohibitions in Part IV of the TPA;

(d) identify relevant alternatives to the exemption provisions, including non-legislative approaches;

(e) analyse, and, as far as reasonably practical, quantify the benefits, costs and overall effects of the exemption provisions and alternatives identified in (d) on the Australian economy;

(f) list the individuals and groups that provided written submissions and/or were consulted during the review and take into account their views;

(g) determine a preferred option for regulation — that is, whether the exemption provisions should be abolished, modified or maintained; and

(h) advise on possible mechanisms for monitoring and reviewing any changes to the exemption provisions after the Government's announced response.

(4) In undertaking the review, the Council is to advertise nationally, take written submissions, consult with key interest groups and affected parties, and release a draft report or options paper for comment prior to a final report.

(5) Upon receipt of the Council's final report, the Government will consider the recommendations made and announce what action is to be taken as soon as possible.

Wheat Marketing Act 1989

1. The *Wheat Marketing Act 1989* (the WMA), and associated regulations, are referred to an Independent Committee for evaluation and report by 15 December 2000. The Independent Committee is to focus on those parts of the legislation which restrict competition, and/or which impose costs and/or confer benefits on businesses involved in the Australian wheat industry and/or the community generally.

2. the Independent Committee is to report on the appropriate arrangements, if any, for regulation of wheat exports taking into account the following:

(a) legislation and regulations which restrict competition should be retained only if the benefits to the community as a whole outweigh the costs, and if the objectives can only be achieved by restricting competition;

(b) in assessing the benefits and costs in (a), regard should be had, where relevant, to ecologically sustainable development, welfare and equity, occupational health and safety, economic and regional development including

employment and investment growth, and social issues, consumer interest, the competitiveness of Australian businesses including small business, and efficient resource allocation; and

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

3. In making assessments in relation to the matters in (2), the Independent Committee is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the Competition Principles Agreement.

4. The report of the Independent Committee should:

(a) identify the nature and the magnitude of the economic, social, environmental or other issues the WMA seeks to address;

(b) assess the objectives of the WMA and the Wheat Export Authority arrangements, structure and functions;

(c) assess the effectiveness of the separation of regulatory and commercial functions in the WMA;

(d) identify whether, and to what extent the WMA restricts competition, including the appropriateness of granting a monopoly to a private company;

(e) identify any relevant possible alternatives to the wheat export arrangement in the WMA, including non-legislative approaches;

(f) analyse and quantify the benefits, costs and overall effects on businesses involved in the Australian wheat industry and/or the community generally (the public benefits test), of the exiting WMA arrangements, compared to the alternatives identified in (e) above, and identify the impact on different groups likely to be affected by either the continuation of the WMA arrangements or implementation of viable alternatives;

(g) determine a preferred option for regulation, if any, in light of objectives set out in (2) above;

(h) examine mechanisms for increasing the overall efficiency, including minimising the compliance costs and paper burden on small business, of both the WMA and, where it differs, the preferred option; and

(i) list the individuals and groups consulted during the review and outline their views, or reasons why consultation was inappropriate.

5. Part of the review will involve the Committee advertising in national and major rural media, consulting with key stakeholders, other affected parties and rural communities likely to be affected by any reforms, and publish a report.

6. The Committee should also take into account it is the Government's intention to announce its response to its recommendations. It will do this after obtaining advice from the Minister and if appropriate, after consideration by Cabinet.

Legislation Review of Clause 6 of the Competition Principles Agreement and Part IIIA of the *Trade Practices Act 1974*

Productivity Commission ACT 1998

I, ROD KEMP, Assistant Treasurer, pursuant to Parts 2 & 3 of the *Productivity Commission Act 1998*, hereby refer Clause 6 of the Competition Principles Agreement (CPA) and Part IIIA of the *Trade Practices Act 1974* (TPA) to the Commission for inquiry and report within twelve months of receipt of this reference. The Commission is to focus on those parts of the legislation that restrict competition, or that impose costs or confer benefits on business. The Commission is to hold hearings for the purpose of this inquiry.

Background

2. In April 1995, the Commonwealth, State and Territories signed three Inter-governmental Agreements, including the CPA, which established the framework for competition policy reforms. The CPA requires that its own terms and operation be reviewed after five years of operation. The Terms of Reference for that review specify that the review of Clause 6 of the CPA be incorporated into the competition policy review of Part IIIA of the TPA.

3. Clause 6 requires the Commonwealth to establish an access regime with certain characteristics, explains the circumstances in which this regime will be utilised, and details the principles to which an effective State/Territory access regime must conform. Part IIIA of the TPA discharges the Commonwealth's obligation under Clause 6. There is no intention that the review lead to reconsideration of existing or pending certifications, declarations or undertakings agreed or accepted under Part IIIA.

Scope of Inquiry

4. The Commission is to report on current arrangements established by Clause 6 and Part IIIA for regulation of access to significant infrastructure facilities, and ways of improving them, taking into account the following:

(a) legislation or regulation that restricts competition or that may be costly to business should be retained only if the benefits to the community as a whole outweigh the costs; and if the objectives of the legislation or regulation can be achieved only be restricting competition or by imposing costs on business;

(b) where relevant, the effects of Clause 6 and Part IIIA on the environment, welfare and equity, occupational health and safety, economic and regional development, consumer interests, the competitiveness of business (including small business), investment and efficient resource allocation;

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

(d) mechanisms that may improve Clause 6 and/or Part IIIA processes for achieving third party access to essential infrastructure, or that may engender greater certainty, transparency and accountability in the decision making process in Clause 6 and Part IIIA.

5. In making assessments in relation to the matters in 4, the Commission is to have regard to the analytical requirements for regulation assessment by the Commonwealth, including those set out in the CPA. The report of the Commission should:

(a) identify the nature and magnitude of the problem(s) that Clause 6 and Part IIIA seek to address;

(b) clarify the objectives of Clause 6 and Part IIIA;

(c) identify whether, and to what extent, Clause 6 and Part IIIA restrict competition or impose costs on businesses;

(d) consider any alternative means of achieving the objectives of Clause 6 and Part IIIA, including non-legislative approaches;

(e) analyse and, as far as reasonably practical, quantify the benefits, costs and overall effects of Clause 6 and Part IIIA

and alternatives identified in (d), including the impact of Clause 6 and Part IIIA on investment and infrastructure;

(f) identify the different groups likely to be affected by Clause 6 and Part IIIA and each of the alternatives in (d) above;

(g) list the individuals and groups consulted during the review and outline their views;

(h) determine the preferred option for regulation, if any, in the light of the objectives set out in (b);

(i) examine measures to engender greater certainty, transparency and accountability in the decision making processes in Clause 6 and Part IIIA;

(j) examine mechanisms for improving Clause 6 and Part IIIA processes for achieving third party access to significant infrastructure facilities, including measures to improve flexibility, reduce complexity, costs and time for all participants and, where the mechanisms differ, determine a preferred mechanism; and

(k) examine the roles of the National Competition Council and the Australian Competition and Consumer Commission and the Australian Competition Tribunal in the administration of the access provisions of Clause 6 and Part IIIA, and the relationship between the institutions.

6. The Commission is to take into account any recent relevant studies undertaken.

7. In undertaking the review, the Commission is to advertise nationally, consult with key interest groups and affected parties, and produce a report.

8. The Government will consider the Commission's recommendations and consult as appropriate, and the Government's response to matters affecting Part IIIA, and the response of parties to the CPA to matters affecting Clause 6 of the CPA, will be announced as soon as possible after the receipt of the Commission's report.

ROD KEMP