

**WOOLWORTHS LIMITED**

**SUBMISSION**

**PRODUCTIVITY COMMISSION -  
REVIEW OF NATIONAL COMPETITION POLICY  
ARRANGEMENTS (NCP)**

To the:  
NCP Inquiry  
Productivity Commission  
Post Office Box 80  
**BELCONNEN ACT 2616**

By email: [ncp@pc.gov.au](mailto:ncp@pc.gov.au)

**Woolworths Contact:**

**Rohan Jeffs**  
**Ph: (02) 9323 1534**  
**Fax: (02) 9323 1596**

**JULY 2004**

## Table of contents

<b>1.</b>	<b>Executive Summary .....</b>	<b>1</b>
	<b>Background to Inquiry .....</b>	<b>2</b>
	<b>Desirability of NCP .....</b>	<b>3</b>
<b>2.</b>	<b>NCP Outcomes and Performance to Date .....</b>	<b>6</b>
	<b>The NCP Mission .....</b>	<b>6</b>
	<b>Legislative Review and Reform: Incomplete .....</b>	<b>7</b>
	<b>NCP Legislative Review and Reform Process .....</b>	<b>7</b>
	<b>Outcomes .....</b>	<b>7</b>
<b>3.</b>	<b>State and Territory performance .....</b>	<b>8</b>
<b>4.</b>	<b>Pharmacy .....</b>	<b>9</b>
	<b>Legislation Review and Reform .....</b>	<b>9</b>
	<b>Protection of Suppliers, Not Consumers .....</b>	<b>11</b>
	<b>Outcome of Legislative Review .....</b>	<b>13</b>
	<b>Recent Developments .....</b>	<b>13</b>
	<b>Conclusion .....</b>	<b>14</b>
<b>5.</b>	<b>Liquor Legislation Review and Reform .....</b>	<b>14</b>
	<b>Performance .....</b>	<b>14</b>
	<b>New South Wales' Performance .....</b>	<b>15</b>
	<b>Recent Developments .....</b>	<b>15</b>
	<b>New Regime retains anti-competitive aspects of "needs test" .....</b>	<b>16</b>
	<b>Queensland .....</b>	<b>17</b>
	<b>Western Australia .....</b>	<b>18</b>
	<b>South Australia .....</b>	<b>18</b>
	<b>Tasmania .....</b>	<b>19</b>
	<b>Northern Territory .....</b>	<b>20</b>
<b>6.</b>	<b>Petrol Retailing Legislation Review and Reform .....</b>	<b>21</b>
	<b>Performance .....</b>	<b>21</b>
	<b>Western Australia .....</b>	<b>21</b>

<b>South Australia.....</b>	<b>22</b>
<b>7. Shop Trading Hours Legislation Review and Reform.....</b>	<b>22</b>
<b>Performance .....</b>	<b>22</b>
<b>Queensland.....</b>	<b>22</b>
<b>Western Australia.....</b>	<b>23</b>
<b>South Australia.....</b>	<b>24</b>
<b>8. Conclusion .....</b>	<b>24</b>
<b>9. Summary of Status of Review and Reform in States and Territories.....</b>	<b>26</b>

# Productivity Commission Review of NCP: Impact of NCP on retailing

---

## 1. Executive Summary

- 1.1 Woolworths strongly supports the ongoing implementation of National Competition Policy ("NCP") in accordance with the "guiding principle" outlined in clause 5(1) of the *Competition Principles Agreement* ("CPA"):

*"The guiding principle is that legislation...should not restrict competition unless it can be demonstrated that:*

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

- 1.2 However, in spite of some benefits, NCP review and reform of retail legislation has not been effectively implemented by State and Territory Governments. Despite a 12 month extension, no jurisdiction completed its legislative review and reform agenda by 2004.
- 1.3 High Volume, low margin retailers like Woolworths generally bring improved convenience and range to consumers, as well as lower prices for consumer goods. The combination of these factors and the flow-on effects of lower prices highlight the contribution such retailers have made, and can continue make, to productivity and therefore economic growth. Given the large contribution efficient retailing brings to Australia's economic performance and consumer welfare more generally, Woolworths supports the continued review and reform of existing anti-competitive retail legislation, in the context of NCP.
- 1.4 *Shop Trading Hour Regulation.* Woolworths observes that reform of shop trading hours has been generally slow. The States and Territories which have reviewed and reformed shop trading hours have enjoyed overwhelming economic benefits, to retail sector employment, consumer convenience, consumer choice and prices. In contrast, Western Australia, which has refused to reform its trading hours regulation until 2005, has affected consumer convenience, price and sentiment as well as a drop in retail employment.
- 1.5 Woolworths acknowledges the benefits NCP has brought about in areas such as deregulation of shop trading hours, but notes that in some areas, it appears NCP has been sidelined in favour of protection of incumbent interests. It is Woolworths' submission that this has particularly been the case in the areas of:

- Pharmacy regulation; and
- Liquor licensing regulation.

- 1.6 *Pharmacy Regulation Reform.* Woolworths submits that NCP has failed to advocate innovation in the face of pressure from vested pharmacy interests in the area of maintenance of cumbersome and anti-competitive regulation. The findings of the Working Group review of pharmacy regulation, which found that whilst restricting pharmacy ownership was not in the public interest, the adverse impact of structural change on existing pharmacists justifies the retention of current ownership restrictions is no longer able to be supported as pro-consumer. This is a proposition which the Pharmacy Guild of Australia does not rely upon in its submissions to this inquiry and is contrary to the "guiding principle" of NCP discussed above at 1.1.
- 1.7 *Liquor Regulation Reform.* Woolworths believes that very little progress has been made in the reform of anti-competitive liquor licensing laws in the Northern Territory, South Australia, Queensland, Western Australia and NSW. In 2004, the Northern Territory, South Australia and NSW had not completed their review and reform processes. Additionally, Queensland and Western Australia, despite extensive reforms, did not comply with NCP.
- 1.8 *Petrol Retailing.* Only the ACT, Western Australia and South Australia have in place laws regulating the retailing of petrol. The legislation in Western Australia cannot be justified in the public interest, however the regulation remains. South Australia had not implemented the review and reform agenda to which it had committed.

## Background to Inquiry

- 1.9 The Productivity Commission ("PC") has invited submissions to its inquiry process for review of the NCP arrangements. Under the terms of the inquiry, the PC is required to report on:
- The impact of NCP and related reforms undertaken to date by Australian, State and Territory Governments on the Australian economy and the Australian community more broadly. The assessment should include:
    - Impacts on significant economic indicators such as growth and productivity, and to include significant distributional impacts, including rural and regional Australia;
    - Its contribution to achieving other policy goals.

- At the Australian State and Territory level, areas offering opportunities for significant gains to the Australian economy from removing impediments to competition, including through a possible further legislation and review programme, together with the scope and expected impact of these competition related reforms.
- 1.10 The terms of reference also require the Commission to take into account the desire of the Commonwealth Government:
- To focus new review and reform activity on areas where there is clear evidence of significant potential gains, in particular where clear gains are possible in Australia's international competitiveness, in the efficiency of domestic markets or for Australian consumers; to ensure possible reform activity considers appropriately the adjustment and distributional implications and its contribution to achieving other policy goals.
  - To take into account but not replicate significant current and recent review activity in areas such as the CoAG work on energy and water and the review of the competition provisions of the *Trade Practices Act 1974* (Cth).
- 1.11 This submission deals with the status of NCP reform in areas of interest to Woolworths. In particular, the areas addressed are:
- (a) the status of proposed legislative review and reform in the States and Territories, including:
    - (i) Shop Trading Hours;
    - (ii) Liquor Licensing;
    - (iii) Petrol Retailing; and
    - (iv) Pharmacies;
  - (b) (where relevant) the effectiveness of the National Competition Council ("NCC") in achieving reform in accordance with the NCP Principles.

## **Desirability of NCP**

- 1.12 Woolworths strongly supports the implementation of NCP by Australian Governments at all levels. As Graeme Samuel, Chairman of the ACCC said recently, Australia's recent economic

success *"has not come about by chance"*.<sup>1</sup> The reforms of the last two decades, including the NCP, which derived from the 1992 Hilmer report, have brought unprecedented rewards to the Australian economy and to Australians, generally.

- 1.13 In 2000, the Parliamentary Joint Select Committee report on the Retailing Sector noted that although the past 20 years has seen difficult structural changes such as the demise of hundreds of small retailers, including grocery stores, pharmacists, newsagents, and liquor outlets, the benefits to the community have outweighed these disadvantages:-

*"Consumers appear to be benefiting from the competitive forces of the current market structure. The evidence revealed that, since 1986, prices have fallen on average for baskets of foods and individual foods at supermarkets. Although there are some exceptions, the Committee accepts that economies of scale and scope have driven prices down in major supermarkets across Australia. Furthermore, surveys have revealed that ...the ability of supermarkets or other stores to open on a weekend is a factor welcomed by many consumers."*<sup>2</sup>

- 1.14 The same Parliamentary Committee also noted in relation to the advent of major chains in the grocery industry that:

*"High levels of efficiency, superior technology and buying power has lead[sic] the Committee to conclude that consumers are voting with their feet, deciding to frequent the supermarkets because of their price, range of products, extended trading hours, and the convenience of one-stop shopping".*<sup>3</sup>

- 1.15 The recent comparative study by William Lewis of the McKinsey Global Institute supports the findings that in other economies, large efficient retailers have driven large productivity gains for the economy as a whole.<sup>4</sup> Lewis concludes his survey of 13 nations on the note that *"policies creating macro economic stability and fair, intense competition are by far the most important conditions for rapid economic growth"*.

- 1.16 Conversely, where small retailers have been shielded from competition by government protection or regulation, Lewis found that productivity has fallen far behind.

---

<sup>1</sup> Graeme Samuel, "Competition and the Australian Way of Life", speech to Canberra & Region Focus on Business, 31 May 2004.

<sup>2</sup> Parliamentary Joint Select Committee on the Retailing Sector, 2000, *Fair Market or Market Failure*.

<sup>3</sup> *ibid*

<sup>4</sup> William W. Lewis, *"The Power of Productivity"*, (2004), University of Chicago Press

1.17 The study undertaken by Lewis demonstrates that productivity improvements in retailing has accounted for some of the biggest advances in productivity in major economies such as the US.<sup>5</sup>

1.18 Lewis finds that retailing plays a huge role in the evolution of economies to advanced stages. This role has been "grossly underappreciated virtually everywhere - First of all, retailers are the only business in the consumer goods chain physically and continuously in contact with consumers. They can know exactly what the consumers buy on a daily basis. That means retailers are in by far the best position to know what consumers want."<sup>6</sup>

*"As retailers have competed amongst themselves to make profits and thereby improve productivity, they have taken actions that have improved productivity along the whole consumer goods chain. They realised that once they reached a sufficient scale, they could by-pass monopolistic, unproductive wholesalers. They could build their own logistic systems and purchase directly from consumer goods manufacturers. They also found that their large volume purchases gave them leverage to insist that small, fragmented consumer goods manufacturers consolidated to lower costs, thereby increasing productivity. In the food chain, large-scale food processors then often assisted farmers to apply higher productivity practices. In theory, this rationalisation of the consumer goods chain could have been led by any party along the chain. In reality, we know retailers were the leaders. The reasons are that consolidation could proceed in smaller increments in retailing and retailers were more confident about the benefits of major changes because they knew better how consumers were likely to react to them".<sup>7</sup>*

1.19 Lewis found that *"the general pattern of evolution in retailing has been from small, low productivity mom and pop stores to high-productivity department stores, hyper markets, super markets, convenience stores etc. In the United States, modern supermarkets are four to five times more productive than mom and pop stores thus, the mix between modern stores and mom and pop stores accounts for a large part of all the productivity gaps. This mix effect starts to show up strongly with Japan and Korea. The Japan and Korea [studies] describe a large number of mom and pop stores left in these countries".*

---

<sup>5</sup> Lewis p230.

<sup>6</sup> PP213-4

<sup>7</sup> P214.



- 1.20 Given the large contribution efficient retailing brings to Australia's economic performance and consumer welfare more generally, Woolworths strongly supports the continued review and reform of anti-competitive retail legislation, as well as pharmacy regulation, in the context of NCP. Continued attention should be paid to clause 5 of the CPA, which requires all existing legislation which has anti-competitive effects to be justified as having a public benefit if it is to remain in force. Woolworths believes that this clause should be given due and proper consideration in the NCC's assessment of state compliance with the NCP Legislative Review and Reform agenda, particularly in relation to the retail sector. As Graeme Samuel said:

*"We can attempt to hold back the tide for a short period by protecting sectors of our economy, to give them time to adjust, but this comes at a cost to consumers here, both in price and quality.*

*"And if by shielding industries from competition we leave them trailing on price or quality, then eventually, when the dam breaks, it will not just be the local DVD store that is left behind, but the entire nation."<sup>8</sup>*

---

## **2. NCP Outcomes and Performance to Date**

### **The NCP Mission**

- 2.1 On 11 April 1995, the Australian, State and Territory governments agreed to a program of competition policy reform, embodied in 3 separate agreements which established the NCP.
- 2.2 Of particular interest to Woolworths is the requirement of governments, under clause 5 of the CPA, to conduct a program for the review, and where appropriate, reform of legislation that restricts competition. Clause 5 also outlined the guiding principles for governments to follow when reviewing and reforming their legislation. In the CPA, the governments agreed that legislation should not restrict competition unless they can show 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.
- 2.3 Originally, the target date for completion of review and reform was 2000, however the CoAG extended this target to 30 June 2002. A further extension was granted by the NCC to 30 June 2003 to complete the review and reform activity.(NCC Legislation Review Compendium 2004, p 1.1).

---

<sup>8</sup> Graeme Samuel, speech 31 May 2004.

## **Legislative Review and Reform: Incomplete**

2.4 Relevantly, the legislative review and reform programme includes review and reform of legislation affecting retail trading, specifically in the areas of:

- (a) Retail Trading Hours;
- (b) Liquor Licensing;
- (c) Petrol Licensing; and
- (d) Pharmacies.

## **NCP Legislative Review and Reform Process**

2.5 The NCP Assessment process is described in the CIE Guidelines for NCP Reviews (February 1999, p 12) as follows:

- (a) Jurisdictions identify potentially restrictive legislation
- (b) Jurisdictions establish and undertake review of that legislation (this may be done jointly by a number or all of the jurisdiction)
- (c) Jurisdictions implement the review recommendations;
- (d) The NCC then evaluates the progress of implementation of reforms. The NCC has stated that it has identified review and reform activity inconsistent with NCP principles and discussed appropriate ways forward with the relevant Government body (NCC Assessment, 2003).
- (e) The NCC then makes recommendations to the Treasurer.

2.6 If the Treasurer believes that satisfactory progress under the Agreement has been achieved, then the Federal Government pays the Competition Payment to the State or Territory.

2.7 If the Treasurer believes progress is unsatisfactory, then payment or part of the payment can be withheld by the Federal Government.

## **Outcomes**

2.8 No jurisdiction has completed its Legislative review and reform agenda despite a 12 month extension.

2.9 It was originally directed by the Council of Australian Governments ("CoAG") that all legislative review and reform be completed by 30 June 2002. However this was extended so

that final assessment took place 12 months later. The NCC assessment report was released in late 2003 ("**2003 report**"), and despite this substantial extension, no State or Territory, nor the Commonwealth, had completed its legislative review and reform program. The NCC did however observe that substantial progress had been made.

2.10 ***Commonwealth Government was the second poorest performer***

2.11 The NCC noted that the Commonwealth's performance was below average, reviewing only around one third of its "priority" legislation, and nearly 70% of its non-priority legislation. This was the worst review and reform performance of all jurisdictions apart from Western Australia. The NCC stated in its 2003 report that:

*" its [The Commonwealth's] progress in the review and reform of legislation has set a poor example for the States and Territories." (2003 report, p lvi)*

2.12 ***Poor implementation of retail legislation review and reform***

2.13 In its 2003 report, the NCC identified a number of areas where legislative review and reform by the States and Territories was incomplete. Restrictive retail legislation, namely, liquor licensing and petrol regulation, were identified by the NCC as areas where such review and reform were incomplete. In addition, legislation regulating and restricting competition between pharmacies was particularly poorly attended to. The NCC noted that it regards these restrictions to be high priority (NCC 2003, p xix). State and Territory performance in these areas is discussed under heading 3 in this document. Briefly, these outcomes are:

- Very poor implementation and mixed messages in the area of pharmacy regulation reform.
- Poor implementation of liquor licensing regulation reform
- Poor implementation of petrol retailing reform
- Stronger implementation in the area of retail trading hours deregulation (with the exception of WA and SA).

---

### **3. State and Territory performance**

3.1 The NCP legislation review and reform program required Governments to review around 1800 pieces of legislation between 1996 and 2003, including a number of pieces of legislation in each State and Territory restricting competition in retail sectors such as liquor, petrol, pharmacy as well as retail trading hours legislation for all sectors. (NCC 2003, p 4.1)  
Australia-wide, around, 70% of all nominated legislation has been reviewed and reformed

where necessary. This partly arose from a high level of compliance with NCP in relation to non-priority legislation (81%) ; and a disappointing lower rate of compliance for higher priority legislation (56%). (NCC 2003, p 4.14) The NCC has noted that priority legislation includes retail trading hours and liquor regulation and regulation of pharmacists. (NCC 2003, p4.6)

- 3.2 The NCC in its 2003 report produced tables for each legislative review and reform area, indicating progress achieved by each jurisdiction. These are produced below at Section 8, "Summary of Status of Reforms in States and Territories", updated where necessary with information from the 2004 Legislative Review Compendium ("NCC 2004").

---

## 4. Pharmacy

### Legislation Review and Reform

- 4.1 The NCC found in its 2003 report that in relation to the review of highly restrictive pharmacy regulation none of the States or Territories have complied with their obligations under NCP. (NCC 2003, p xvi) Two reviews of State and Territory pharmacy legislation have been undertaken at a national level, which recommended different levels of reform required. The first ("**the Wilkinson Report**") suggested only minor reforms, retaining the current system. The NCC expressed significant doubt about the conclusions reached in that report (NCC 2002, pp 6.76-78) . A second report ("**the Working Group Report**") recommended broader reforms. Whilst it questioned the Wilkinson Report's conclusion that restricting pharmacy ownership was in the public interest, the Working Group considered that ownership restrictions should be retained because of the significant structural adjustment cost for existing pharmacists if the ownership structure were deregulated. This does not address the consumer cost of not reforming ownership regulation.

- 4.2 The NCC stated in its 2003 report that:

*"The national review noted that the community pharmacy sector has long enjoyed shelter from the full force of market competition. While there is competition between pharmacies, that competition occurs within a relatively homogenous, conservative and stable market. Good professionals do not necessarily make good managers and business people. The current regulatory arrangements, however, have made it easier for poorer business performers to be protected from themselves, such that pharmacies (unlike other small to medium sized businesses) are perceived as low risk businesses by those who own and finance them..."*

*"some pharmacist proprietors would find it difficult to compete with entrepreneurial new entrants. In the United States, Canada and the UK, consumers have 'voted with their feet'. Chain pharmacies in these countries have increased their market share at the expense of smaller independent pharmacies, suggesting that they provide cost, quality and/or convenience benefits to consumers (PC 1999d).*

*"...From a community-wide perspective, this represents an 'income transfer' rather than a true economic cost - the loss to pharmacist proprietors would be matched by an income benefit to consumers (who would spend less on medications) and taxpayers (who would outlay less on the PBS (PC 1999d)." (NCC 2003, p 3.50).*

- 4.3 In spite of these statements, the NCC concluded, following the Working Group report, that the structural adjustment would affect existing pharmacists in such a way as to render reform of ownership restrictions in the pharmacy industry in the short term against the public interest (NCC, 2003, p 3.51). In its submission to this inquiry, the Pharmacy Guild of Australia<sup>9</sup> did not argue that structural adjustment would so affect pharmacists, as a segment of the public, so as to render ownership reform against the public interest. Rather, it stated that

*"The industry represents one of the best examples of successful micro-economic reform in the country...from 1990, almost 700 pharmacies have closed or been amalgamated with others. The result is a **smaller number of larger pharmacies, better able to provide the quality advice and service consumers expect from community pharmacy.**"<sup>10</sup> (emphasis added).*

If this is indeed the case, then there can be no rationale for retaining ownership restrictions on the basis that existing pharmacists will be severely adversely affected.

- 4.4 In the view of the NCC, governments which implemented the Working Group's recommendations would have complied with their obligations. The NCC's support of this "adverse impact of structural change" rationale for retention of ownership restrictions contradicts the "guiding principle" for legislation review: that legislation should not restrict competition unless it can be demonstrated that the benefits to the community as a whole outweigh the costs<sup>11</sup>. However, in supporting retention of the ownership restrictions upon this

---

<sup>9</sup> Pharmacy Guild of Australia National Secretariat, *National Competition Policy and Pharmacy: Submission to Productivity Commission Review of National Competition Policy Arrangements*, June 2004.

<sup>10</sup> PGA, 2004 Submission, paragraph 3.6.

<sup>11</sup> Clause 5(1), Competition Principles Agreement.

rationale, the NCC protects a small number of pharmacists' livelihoods in the face of the competition benefits the entire Australian community will enjoy if the restrictions were to be abolished. These benefits have been acknowledged by the NCC,<sup>12</sup> and the flow-on effects of competitive provision of pharmaceuticals would certainly outweigh any cost to the community in structural adjustment suffered by existing pharmacists.

## Protection of Suppliers, Not Consumers

4.5 The Australian scheme of regulation of pharmacists appears to be a typical scheme which favours and protects existing producers rather than consumers, thus inhibiting the chance of real competition and productivity growth.<sup>13</sup> In a recent speech<sup>14</sup>, Graeme Samuel has noted that legislative review and reform of ownership and location of pharmacies has been a difficult task. He said:

*"If these anti-competitive restrictions are to remain in place in the longer term, they have to be justified as being in the public interest...This public interest has to outweigh any public detriment - that is the fundamental tenet of competition law.*

*"...it must only be where to do so is to the clear and demonstrable benefit of the wider Australian public - NOT specific vested interest groups."<sup>15</sup>*

4.6 The Pharmacy Guild of Australia has also made the following, familiar claims:

4.7 ***"Individual pharmacists have more to lose than corporations in the ramifications of professional misconduct or negligence, thus minimising social harm"<sup>16</sup>.***

4.8 The NCC is sceptical of this view, noting that it is not in the interests of non-pharmacist owners to expose themselves to risk of litigation or loss of income. The NCC noted that friendly societies and surviving corporate-owned pharmacies appear to work well, and are competently managed and professionally sensitive pharmacy businesses<sup>17</sup>.

---

<sup>12</sup> See quote above: NCC 2003, p 3.50.

<sup>13</sup> See comments of Lewis, W.W., 2004, *The Power of Productivity - Wealth, Poverty and the Threat to Global Stability*, p 102

<sup>14</sup> above, n1.

<sup>15</sup> above, n1.

<sup>16</sup> PGA, 2004 Submission, paragraph 4.10.

4.9 *"Large chains destroy community pharmacy"<sup>18</sup>.*

4.10 The rationale for this statement arises from a number of arguments, most of which Graeme Samuel, then President of the NCC has labelled "modern myths promoted against private sector involvement in public health" (although in relation to Health Care).<sup>19</sup>

4.11 Firstly, the PGA argues that the move away from a focus on professional health care and toward a corporate retail model with a focus on product, profit and turnover will reduce the quality of pharmacy service.<sup>20</sup> Graeme Samuel said in relation to this "myth" that in fact it is far more likely that the opposite of this statement would be true. Quality levels can be specified in regulation or private-sector contracts, possibly ensuring better quality of service than currently exists.<sup>21</sup> This notion is supported by evidence supplied to the Wilkinson Review indicating that service levels received at pharmacies is currently less than optimal.<sup>22</sup>

4.12 Secondly, the PGA argues that the investment of both government and pharmacies collaborating to deliver health care services such as medicine reviews to older Australians will be wasted<sup>23</sup>. This need not be the case. The PGA appears to erroneously consider that no qualified pharmacists will be employed who can provide such services in non-pharmacist owned pharmacies- clearly not the case.

4.13 Thirdly, the PGA argues that the advent of non-pharmacist owned pharmacies and larger chains would damage the goal of "equity of access".<sup>24</sup> Graeme Samuel considers this argument also to be a myth.<sup>25</sup> The idea that large chains would destroy pharmaceutical distributors by obtaining the power to purchase pharmaceutical products directly from manufacturers should be seen for what it is: a distinct advantage, bringing lower prices to consumers and eliminating inefficiencies inherent in the current system. Nor is there any reason why this would disadvantage rural Australians, indeed, the opposite is the case.

---

<sup>17</sup> NCC, 2002 NCP Assessment, p 6.78.

<sup>18</sup> PGA, 2004 Submission, paragraph 3.10.

<sup>19</sup> in a speech delivered at the AFR Health Summit, "Reforming Health Care - Privatisation, Deregulation and Competition", February 1999.

<sup>20</sup> PGA, 2004 Submission, paragraphs 3.13 and 4.14.

<sup>21</sup> Graeme Samuel, Speech, February 1999.

<sup>22</sup> NCC, 2002 NCP Assessment, p 6.79.

<sup>23</sup> PGA, 2004 Submission, paragraph 3.18.

<sup>24</sup> PGA, 2004 Submission, paragraph 4.13.

- 4.14 In relation to access, the PGA warns of the "spectre of Americanisation of Australia's health-care system."<sup>26</sup> Graeme Samuel does not think that this "myth" is remotely possible in Australia so long as Australia retains aspects of a public health system such as Medicare. In addition he noted that the problem in the United States has nothing to do with who provides health care services, nor how the supply-side is structured. Rather, it *"has everything to do with the population's level, and mechanism of insurance"*.<sup>27</sup> As noted above, the advent of the pharmaceutical chain in the US and the UK have provided cost, quality and convenience benefits to consumers.

## **Outcome of Legislative Review**

- 4.15 Noting that no government had completed review and reform of its pharmacy legislation, the NCC stated that pharmacy was one of the "key areas where reform is incomplete"(NCC 2003, p xix). It stated that:

*"The Council will look for governments to expedite progress in this important area..."*.  
(NCC 2003, p xx)

- 4.16 The result is that pharmacy regulation became a part of the "suspension pool" or "black hole" of legislation for each State and Territory in the 2003 report, and caused the NCC to recommend to the Treasurer that a portion of NCP payments to States be suspended until the review and reform process is complete.

## **Recent Developments**

- 4.17 In response to the 2003 report, the NSW Premier and the Prime Minister of Australia agreed on 1 April 2004 what level of reform was required in order to comply with the States' CPA obligations in relation to pharmacy regulations.
- 4.18 The result is that while the NCC has advocated the Working Group report's more balanced recommendations, the Australian Government has authorised the implementation of the Wilkinson report's recommendations, which the NCC has expressed significant concerns in relation to the veracity of its conclusions.

---

<sup>25</sup> Graeme Samuel, Speech, February 1999.

<sup>26</sup> PGA, 2004 Submission, paragraph 6.4.

<sup>27</sup> Graeme Samuel, Speech, February 1999.



## Conclusion

- 4.19 In conclusion, given the unjustified "adverse impact of structural change" rationale for retaining ownership restrictions in PGA's submission to this inquiry, Woolworths submits that the NCC should review its acceptance of the Working Party Review's recommendation that reform of ownership restrictions is against the public interest in the short term. The NCC's acceptance of this rationale in any case represents an unwillingness of NCP to advocate innovation and progress in the face of pressure from pharmacists, a small segment of the Australian community, to the detriment of consumers in the form of lower prices and the flow-on effects of lower-priced pharmaceuticals. This flies in the face of the "guiding principle" of NCP legislative review and reform, embodied in clause 5 of the CPA.

---

## 5. Liquor Legislation Review and Reform

### Performance

- 5.1 The NCC said in its 2003 report that:

*"Liquor licensing laws that focus on the public interest via non-discriminatory provisions aimed at harm minimisation are consistent with NCP principles...More often than not, however, liquor licensing laws preclude entry by responsible sellers and favour some sellers at the expense of others...As in previous assessments, the Council regards retail-related restrictions to be high priority matters." (NCC 2003, pp xviii-xix).*

- 5.2 Further, the NCC said that liquor legislation involves three broad types of liquor restrictions, namely:

- Barriers to entry: e.g. needs test and licence fees;
- Discrimination between sellers: e.g. restrictions on who can hold certain types of licence, or how certain licences may be conducted, which in effect discriminate between different types of licence holder.
- Market Conduct: e.g. restrictions on floor space, types of facilities and product that may be offered.

- 5.3 The NCC noted in relation to these restrictions:

*"These arbitrary restrictions have adverse implications for potential new businesses, for consumer convenience and community amenity more generally." (NCC 2003, p xix).*

- 5.4 At the time of publication of the NCC's 2003 report, only Victoria, Tasmania and the ACT were assessed as meeting their CPA obligations in this area. Review and reform of liquor laws in the Northern Territory, South Australia, and New South Wales was incomplete, and Queensland and Western Australia did not comply with their obligations despite implementing significant reforms.

## New South Wales' Performance

- 5.5 In NSW, the Government has completed its review of the State's liquor legislation, and amendments were passed in mid 2004. This only served to further complicate and delay the process of liquor licensing. The review noted that the *Liquor Act 1982* and *Registered Clubs Act 1976* retain a number of features which the NCC considers to restrict competition:

## Recent Developments

- 5.6 On 24 June this year, the NSW Parliament passed the *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004* ("**Liquor Amendment Bill**"), which is awaiting assent at the time of writing. The new regime involves repeal of the "needs test" provisions of the *Liquor Act 1982*, and their replacement with a "Social Impact Assessment Statement" ("**Assessment Statement**").
- 5.7 In essence, the Assessment Statement will be required for all Bottle Shop and Hotel Licence applications. A "Category B" Social Impact Assessment Statement (which requires a detailed assessment of the local and broader community) will generally be required, however in certain cases a less detailed, "Category A" Social Impact Assessment Statement will be required.
- 5.8 Only in the case of removals of licences under very specific circumstances, would a "Category A" Statement be required, namely:
- The general operating parameters of the licence are not to substantially change, namely: the trading hours of the licensee; that the size of the new premises is less than 10% of the original licensed premises; and that generally the conditions on the licence don't change; and either:
    - In Metropolitan Areas, where either: the removal of a Hotel is within 1km; or the removal of an Off-licence is within 500m of the original licensed premises; or
    - In Rural Areas, where the removal is within 5km of the original licensed premises.

- 5.9 The NSW Department has indicated that this second tier reflects the current process for "short removals", which are exempted from the application of the current "needs test" where the removal is within the "neighbourhood" under s57(4) of the *Liquor Act* 1982.

### **New Regime retains anti-competitive aspects of "needs test"**

- 5.10 However the current regime does not impose any restrictions on the operations of the licensee where the removal is made within the neighbourhood, except to the extent that objections could be made on grounds other than "needs".
- 5.11 This new regime is clearly an attempt to prevent liquor licensees from increasing their size.
- 5.12 Such a restriction is not possible under the current regime. At the least, the new regime would submit such licensees to a more stringent, and therefore costly, application process. This size restriction indicates that the reform may still be aimed at protecting incumbent liquor retailers in an area from expansion of their competitors, contrary to the ostensible reasons for reform.
- 5.13 In addition, the 500-metre radius within which the "Category A" Assessment Statement is designed to be used, will, in most areas be smaller than the "neighbourhood". This is more restrictive than the current regime. Under the current NSW regime, no objection on the "needs" ground can be taken against any removal of a licence to different premises within the same neighbourhood. A neighbourhood is commonly associated with a suburb or town areas much larger than the 500-metre test. Woolworths observes that the concept of "neighbourhood" has not been removed from the Act, so there is no apparent reason why "neighbourhood" could not have been the test rather than an arbitrary "radius" criterion.
- 5.14 In Woolworths' submission, the reforms should not alter the NCC's assessment of NSW's non-compliance on liquor licensing.
- 5.15 In a February 2004 NCC Media Release, Dr Craik, President of the NCC, said (in relation to the withdrawn *National Competition Policy Liquor Amendments (Commonwealth Financial Penalties) Bill 2004*, which is not substantially different from the present *Liquor Amendment Bill* in its imposition of an Assessment Statement requirement):

*"After publicly threatening to open up the market in ways that might cause harm, the NSW Government's proposals appear to be similar to reforms that have been adopted without controversy in other States and Territories that have met their NCP obligations."*

5.16 Dr Craik also stated that the NCC would review NSW's reforms towards the middle of this year. Owing to the delay in implementation, it seems likely that the review will take place somewhat later.

## Queensland

5.17 QLD's *Liquor Act 1992* was reviewed in 1999. At the time of the review, the legislation contained several competition restrictions, relevantly:

- A 'public needs' test;
- An ownership requirement: sellers of packaged liquor to the general public must hold a general (hotel) licence, with the hotel licence limited to a maximum of three detached bottle shops that had to be located within a 5km radius of the main licence;
- Restrictions on market conduct: bottle shops could not be drive-in facilities and could not have more than 100 sqm of display area.

5.18 Following the review, the QLD government amended its legislation with the *Liquor Amendment Act 2001*. Amendments included:

- Replacing the 'public needs' test with a 'public interest' test;
- Relaxing the size and location constraints applying to packaged liquor outlets;
- Removing quantity limits on club sales on packaged liquor; but
- Retaining the ownership requirement on a 'harm minimisation' rationale.

5.19 The NCC in its 2002 Assessment ("**2002 Report**") found that despite significant achievements in reforming the public needs test and market conduct provisions of its *Liquor Act*, the retention of the ownership requirement generated significant anticompetitive effects. (NCC 2002, pp 10.21-10.22) The NCC stated in 2003 that:

*"Neither the review nor Queensland's subsequent reporting to the council established a public interest case for Queensland restrictions on the size of bottle shops. Other jurisdictions do not limit bottle shop size and do not prohibit drive-in facilities; further, their reviews did not contemplate the introduction of such restrictions...following Victoria's removal of the 8 per cent rule, no jurisdiction other than Queensland has any limit on the number of bottle shops a licence holder may*

own.

*"...Queensland's packaged liquor restrictions...raise the costs of entry into the packaged liquor market for prospective entrants, divert packaged liquor sales to hotels and thereby raise hotel prices, and constrain competition among bottle shops. There is no evidence that the restrictions contribute to harm minimisation."*(NCC 2003, pp 7.16-7.17)

## **Western Australia**

5.20 WA's *Liquor Licensing Act 1988* contains two competition restrictions:

- a needs test; and
- discrimination between hotels and liquor stores- where hotels may sell packaged liquor on Sundays, but liquor stores are prohibited from doing so.

5.21 In March 2001, WA's review of its liquor laws made its recommendations, and by September 2003, the WA Government agreed to a package of reform measures, including:

- To replace the needs test with a public interest test;
- To simplify licence types; and
- Provide for outlets engaged in similar activities to be open during the same hours. (NCC 2003, pp 7.17-7.18)

5.22 However, these reforms are to take effect from 1 July 2005. The NCC said in relation to this deferral:

*"Western Australia has not provided a public benefit justification for deferring the reforms until 2005...[and therefore] has not met its CPA clause 5 obligations..."* (NCC 2003, p 7.18).

## **South Australia**

5.23 SA completed its review of liquor licensing in 1996 and removed a number of restrictions in 1997. It however retained the "needs test" provision and the requirement that packaged liquor can only be sold from premises exclusively devoted to the sale of liquor.

In relation to the needs test, the NCC noted:

*"The Council raised the proof-of-need test with the former South Australian Government in the 1999 Assessment. It noted that the main effect of the test is to restrict entry by new sellers rather than to directly address harm minimisation..."*  
(NCC 2003, p 7.18)

5.24 The South Australian Government conducted a review which published a draft report in April 2003. The NCC endorsed the view of the review, stating that:

*"a serious competition restriction that cannot be justified by public benefits and should be abolished."* (NCC 2003, p 7.19)

5.25 In relation to the second restriction, the draft report noted that it has been interpreted by the licensing authority as a requirement of dedicated premises which may be under the same roof as a larger retailing business, such as a supermarket, and that it would therefore pose only minor costs and entails some harm minimisation benefits. The NCC supports this view. (NCC 2003, p 7.19)

5.26 As the South Australian reform process is not complete, the NCC found that SA had not complied with its CPA clause 5 obligations.

## **Tasmania**

5.27 The Tasmanian legislation originally contained two restrictions on competition:

- The '9 litre rule', which prevented non-hotel sellers of packaged liquor from selling less than 9 litres of liquor in any one sale (apart from Tasmanian wine); and
- A prohibition on the grant of a liquor licence in connection with the activities of a supermarket, meaning that although supermarket operators can hold licences, they cannot sell packaged liquor from their supermarket premises.

5.28 In a review completed in December 2002, the Review Group recommended:

- removing the 9 litre rule; and
- that there would be no net benefit in permitting supermarkets to sell packaged liquor. The review found that the adverse economic impacts (including a loss of employment) would be matched by the anticipated customer convenience and price benefits. (NCC 2003, p 7.20)

5.29 On that basis, the report recommended to remove the rule, consistent with the guiding principle in the CPA. However, in 2003, when the Tasmanian government introduced

amending legislation, whilst it abolished the 9 litre rule, it rejected the review recommendation to remove the restriction on supermarket sales.

5.30 The Tasmanian Government noted that Tasmania already has the second largest number of packaged liquor outlets per head in Australia and expressed concern about increased access to alcohol, on the basis of a harm-minimisation rationale. The Tasmanian Government stated that the review might have underestimated the costs (e.g. increased access to alcohol) and overestimated the benefits (e.g. convenience benefit).

5.31 In relation to the Tasmanian Government's position on supermarket sales, the NCC said:

*"The Government's position is based on a perceived strong positive relationship between the number of liquor outlets, the consumption of alcohol and alcohol-related harm. The review, however, cited persuasive evidence that supermarket sales of liquor present no greater threat to safety than posed by sales from other licensed outlets."* (NCC 2003, p 7.21)

5.32 In spite of this finding, the NCC agreed with the Review Group that the removal of the requirement would have very little effect on the market. Therefore, the NCC found that Tasmania had complied with its CPA obligations.

## **Northern Territory**

5.33 The NT's liquor legislation contains the following restrictions on competition:

- a needs test; and
- discrimination between hotels and liquor stores whereby only hotels may trade on Sundays.

5.34 The NCC has acknowledged that the NT Government faces a unique problem whereby alcohol has created stresses in the community, however it noted:

*"that a licensing test that focuses on a public interest factors such as harm minimisation and community amenity (without references to outlet density or competitive effects on incumbents), and that does not discriminate between sellers of similar products, would be consistent with NCP principles."* (NCC 2003, p 7.19).

5.35 The review report of the *Liquor Act* has been finalised and the government was expected to consider the report at some point in 2003. However, as the review and reform process was not complete at the date of the assessment, the NCC found that the NT Government did not comply with its CPA obligations.

---

## 6. Petrol Retailing Legislation Review and Reform

### Performance

- 6.1 The ACT, Western Australia and South Australia are the only states which have in place legislation which affects competition in petrol retailing. In 2002, the NCC assessed that the ACT, which has legislation allowing the Minister to regulate fuel prices, complied with its obligations, as this power was only to be used in exceptional circumstances. However, the NCC assessed Western Australia and South Australia as not complying with their obligations.

### Western Australia

- 6.2 Western Australia has introduced fuel pricing measures, including:
- Requirement that prices be fixed for at least 24 hours;
  - Maximum wholesale price arrangements;
  - The right of a retailer to purchase 50% of petroleum products from a supplier other than the primary supplier; and
  - Mandatory price boards to be displayed in regional centres. (NCC 2003, p7.26)
- 6.3 Additionally, WA has introduced fuel standards which reduce competition by making it more difficult to import fuel into WA. The NCC has noted that this leaves the only refinery in WA as a virtual monopolist at the wholesale level. (NCC 2003, p 7.26)
- 6.4 An ACCC report on WA's fuel price arrangements indicated that it was likely that the combination of fuel price arrangements and tighter fuel standards would exert an adverse influence on oil company investment in WA. (ACCC 2002, *"Terminal gate pricing arrangements in Australia and other fuel pricing arrangements in Western Australia"*, as cited by NCC 2003, p 7.27)
- 6.5 In relation to Western Australia, the NCC considered that:
- "the extent of the price and other benefits flowing from the restrictions is ambiguous, with price outcomes appearing to depend on the measurement time period. The Council is also concerned about the absence of support for the restrictions by industry stakeholders. ... Western Australia has retained its fuel price restrictions without it being able to clearly demonstrate that they provide a public benefit..."* (NCC 2003, p 7.29).



## South Australia

- 6.6 In relation to the South Australian restrictions, contained in the *Petroleum Products Regulation Act 1995* the NCC noted that the South Australian government completed a review of the petrol restrictions in 2001 and found that the Act created a barrier to entry and protected industry participants without providing a net public benefit. The South Australian government accepted the findings of the review and is drafting legislation giving effect to them. It intends to phase out the current restrictions by June 2004.(NCC 2003, p 7.29) In relation to the plan to phase in reforms in order to give industry participants an opportunity to adjust to changing conditions, the NCC said:

*"The Council accepts the need for a phased reform but notes that South Australia had not passed legislation to effect the commencement of the foreshadowed reforms"*  
(NCC 2003, p 7.29)

---

## 7. Shop Trading Hours Legislation Review and Reform

### Performance

- 7.1 Shop trading hours were one area in which NCP principles have been with some exceptions more effectively, though belatedly and selectively applied. The NCC stated:

*"Prescribed shop trading hours discriminate amongst sellers on the basis of location, size or product and prevent them from trading, and consumers from shopping, at the times they consider appropriate. Such regulations are out of step with social and demographic characteristics of modern economies where many people reside in two income households and desire flexibility in where and when they make their purchases of goods and services."*

- 7.2 In spite of this statement, and an observation that no properly constituted review has determined that such restrictions provide a net community benefit, shop trading hours remain regulated in Western Australia and Queensland.

### Queensland

- 7.3 Queensland's *Trading (Allowable Hours) Act 1990* empowers the Queensland Industrial Relations Commission to restrict trading hours for "non-exempt" (i.e. non-specialist) stores during the week. Sunday trading is allowed between certain hours for "non-exempt" stores in the south-east Queensland region. Certain specialist shops and small independent shops have unlimited opening hours.

- 7.4 Although the NCC has assessed Queensland as having met its CPA obligations, the Queensland government has retained restrictions on shop trading hours that apply only to large, non-specialist shops, without supplying a public benefit case for such discriminatory treatment.

## Western Australia

- 7.5 The Western Australian Government's trading hours legislation, the *Retail Trading Hours Act 1987*, currently restricts trading in regions below the 26th parallel:
- Monday to Saturday trading hours for all shop categories to prescribed opening and closing times, although small retail shops have longer opening hours than general retail shops (such as supermarkets and department stores); and
  - Sunday trading is prohibited for general retail shops. (NCC 2003, p 7.3)
- 7.6 A review of the legislation performed in 1999 was not made public. In 2003, the WA Government sent a confidential copy of the review to the NCC, which recommended extending general trading hours to 9pm. The other recommendations were rejected by the government, but they did not include either the removal of discriminatory differentiation between large and small shops, nor did they recommend the lifting of Sunday trading restrictions.
- 7.7 In June 2003, the WA Government announced that it would not change trading hours until 2005. Any such changes would not affect retail trading hours in the Perth area, although weeknight trading hours would be extended to 9pm.
- 7.8 In relation to the failure by Western Australia to implement reforms consistent with NCP, the NCC said:
- "...evidence from reviews and from the experience of deregulated jurisdictions negate the arguments put by proponents of such restrictions. For example, small retail business employment in Victoria has grown since it removed restrictions in 1996 whereas it has fallen by almost 10 per cent over the period in Western Australia" (NCC 2003, p xviii).*

## South Australia

7.9 South Australia's *Shop Trading Hours Act 1977* has been amended in recent years but still contains some restrictions on trading hours:

- Monday to Friday trading by "non-exempt" shops (e.g. large general retailers and supermarkets) allowed until 9pm in all areas; and
- Sunday trading by "non-exempt" shops permitted between the hours of 11am and 5pm.

7.10 Clearly discrimination against larger retailers still exists, since "exempt" shops can trade in unrestricted hours. As the NCC notes:

*"The legislation discriminates between exempt and non-exempt shops based on size and product sold..."*

*"Unlike their smaller, specialist competitors, these retailers cannot open after 9pm on weekdays, 6pm on Saturdays, and 5pm on Sundays, and no public interest case supports these restrictions. Unlike Queensland, South Australia has no standing mechanism to bring about further liberalisation of trading hours"(NCC 2003, p 7.5-7.6).*

---

## 8. Conclusion

8.1 The "guiding principle" of NCP legislative review and reform, embodied in clause 5(1) of the CPA, is critical to an internationally robust and domestically competitive economy. However, as a result of State Government and to some extent Federal Government intransigence, it has not been effectively implemented in the review and reform, in particular in relation to State and Territory retail trading and liquor regulation and pharmacy legislation. In spite of this retail and pharmacy legislation being classified as "priority legislation" for review and reform by the NCC, it is clear that not all of the States and Territories have supported the NCP process.

8.2 Pharmacy legislation retains ownership restrictions which are cumbersome and anti-competitive. These restrictions have yet to be reformed by any State or Territory. There has been very little progress in the reform of anti-competitive liquor licensing laws in the Northern Territory, South Australia, Queensland, Western Australia and NSW. In relation to petrol retailing regulation, neither the Western Australian, nor the South Australian governments

could justify the existence of the regulation on the basis of overwhelming public benefit.

- 8.3 Given the large contribution efficient retailing brings to Australia's economic performance and consumer welfare more generally, Woolworths strongly supports the continued review and reform of anti-competitive retail legislation, as well as pharmacy regulation, in the context of NCP. Woolworths believes that it is imperative that NCP is implemented with a stronger focus on the "guiding principle" of NCP reform: anti-competitive legislation should not be retained unless the benefits of the legislation outweigh the costs and the objectives of the legislation can only be achieved by restricting competition in that way. Retention of anti-competitive ownership restrictions without such a justification will significantly impede the achievement of the objectives of NCP.

---

## 9. Summary of Status of Review and Reform in States and Territories

### 9.1 Pharmacy

*Source: NCC 2003, p3.55*

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	Pharmacy Act 1964	Entry, registration, title, practice, discipline, advertising, business ownership, licensing	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>	An amending Bill has been introduced to Legislative Assembly and is currently adjourned for debate in the Legislative Council (as at 25/5/04)	Review and reform incomplete

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	Pharmacists Act 1974	Entry, registration, title, practice, discipline, advertising, business ownership, licensing	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>	Victoria commenced a further review to examine implementation options for Wilkinson Review recommendations and to assess other outstanding restrictions. It released a discussion paper in August 2002. It recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies). The Minister for Health is considering the recommendations arising from responses to the Victorian Discussion paper. (NCC 2004, p 4.55)	Review and reform incomplete

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland <sup>28</sup>	Pharmacy Act 1974	Entry, registration, title, practice, discipline, advertising business ownership	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions).Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on - ownership of pharmacies by friendly societies and other - that currently own pharmacies).</p>	Queensland passed the Pharmacists Registration Act 2001. Queensland intends to introduce reforms to implement the review recommendations soon and expects the new arrangements to commence by the end of 2003.	Review and reform incomplete
Western Australia	Pharmacy Act 1974	Entry, registration, title, practice, discipline, advertising business ownership	National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions).Further, the review	Western Australia is consulting with stakeholders on the recommendations from the national review.	Review and reform incomplete

---

<sup>28</sup> Queensland limited its involvement in the review to ownership provisions because it had a separate NCP process under way for the review of registration provisions in its Pharmacy Act.

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
			<p>recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on - ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>		



<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	Pharmacy Act 1991	Entry, registration, title, practice, discipline, advertising, business ownership, licensing	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on - ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>	South Australia anticipates a Bill to implement the decisions of the CoAG senior officials' working party will be introduced into Parliament in the second half of 2003.	Review and reform incomplete

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania <sup>29</sup>	Pharmacy Act 1908	Entry, registration, title, practice, discipline, advertising, business ownership	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>	Act was repealed and replaced with the Pharmacists Registration Act 2001, which retained ownership restrictions pending its consideration of the outcome of the national review process. The Government has considered the outcome of the review and amending legislation will be introduced into Parliament in the Autumn 2004 session. (NCC 2004, p 8.41)	Review and reform incomplete
ACT	Pharmacy Act 1931	Entry, registration, title, practice, discipline	National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual	In July 2002, the ACT released an exposure draft of the omnibus Health Professions Bill 2002 to repeal and replace this and other health practitioner registration Acts. It anticipates introducing the final Bill to Parliament in late 2003.	Review and reform incomplete

---

<sup>29</sup> Tasmania chose not to include its pharmacy registration provisions in the review.

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
			<p>jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>		

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	Pharmacy Act 1996	Entry, registration, title, practice, discipline	<p>National Review of Pharmacy Regulation (Wilkinson Review) was completed in February 2000. The review recommended retaining registration, the protection of title, practice restrictions and disciplinary systems (although with minor changes to the registration systems for individual jurisdictions). Further, the review recommended maintaining ownership restrictions and removing business licensing restrictions.</p> <p>CoAG referred the national review to a senior officials working group, which recommended that CoAG accept most of the national review recommendations (except the recommendation on non-pharmacy ownership of pharmacies by friendly societies and other non-pharmacists that currently own pharmacies).</p>	The Government intends to introduce a consolidating Health Practitioner Registration Bill in 2003, which will introduce pharmacy ownership restrictions.	Review and reform incomplete

## 9.2 Liquor Licensing

Source: NCC 2003, p 7.22-7.25

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	Registered Clubs Act 1976 Liquor Act 1982	Public needs test which allows objections to the granting of a new licence on the grounds that existing facilities are meting the public need; high fees for a new licence or the transfer of an existing licence, which restrict entry by new sellers	Review is complete and the Government will consider its response following the completion of the alcohol summit in August 2003	An amending Bill was passed on 24 June 2004 proposing to eliminate the 'needs' test. Status: Awaiting Assent (2/7/04).	Review and reform incomplete
Victoria	Liquor Control Act 1987 Liquor Control Reform Act 1998	Needs test and the 8 per cent rule, under which no liquor licensee could own more than 8 per cent of general or packaged liquor licences.	Initial review was completed in 1998. A further review of the 8 per cent rule reported to the Government in June 2000.	Several pro-competition changes (including removal of the needs test) were completed in response to the initial review via the Liquor Control Reform Act.  The Government commenced a gradual phase-out of the 8 per cent cap and introduced a package of measures to assist the competitiveness of independent liquor stores. The cap is being raised progressively and will be removed from the start of 2006	Meets CPA obligations (June 2001)

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	Liquor Act 1992	Public needs test (whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence); provision for only hotel licensees to sell packaged liquor to the public; limit on the number of bottle shops that any one hotel can establish; restrictions on the size and configuration of bottle shops	Review was completed in 19999 and endorsed by Cabinet in February 2000. Review recommended retaining key restrictions and removing some other restrictions.	<p>Liquor Amendment Act 2001 replaced the public needs test with a public interest test that examines the social, health, and community impacts of licensing proposals.</p> <p>The Act also retains the hotel monopoly on the sale of packaged liquor to the public and the restrictions on the ownership, location and configuration of bottle shops. The Council does not consider that there is a net public benefit from these restrictions.</p>	Does not meet CPA obligations (June 2003)

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	Liquor Licensing Act 1988 and Regulations	Public needs test, which allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence; prohibition on liquor stores, unlike hotels, from trading on Sunday.	<p>Review reported in March 2001 and recommended that:</p> <ul style="list-style-type: none"> <li>the granting of a licence depend on the licensing authority being satisfied that the licence is in the public interest, which should not involve a consideration of the competitive impact of a new licence on existing competitors; and</li> <li>introducing identical Sunday trading hours for hotels and liquor stores.</li> </ul> <p>Western Australia released the review report as a draft for public comment.</p>	Western Australia introduced a package of measures (to take effect from 1 July 2005) that will implement the major review recommendations. Western Australia is replacing the public needs test with a public interest test and permitting the same opening hours for outlets engaged in similar activities. No public benefit case has been made to support the deferral of reform.	Does not meet CPA obligations (June 2003)
South Australia	Liquor Licensing Act 1997 (retaining certain restrictions from the earlier Liquor Licensing Act 1985)	Proof-of-need test requiring licence applicants to demonstrate that a consumer needs exists for the grant of a licence; the requirement that only hotels and retail liquor stores devoted to the sale of liquor exclusively may sell liquor.	Review was completed in 1996 and changes were implemented in 1997. A further review of remaining restrictions is nearing completion. A draft review report was published for public comment in April 2003.		Review and reform incomplete

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania	Liquor and Accommodation Act	The 9 litre rule which prevents non-hotel sellers of packaged liquor from selling liquor (except for Tasmanian wine) in quantities less than 9 litres in any one sale; prohibition on supermarkets selling packaged liquor from their supermarket premises.	Review was completed in December 2003. It recommended removing the nine litre rule and the prohibition on sales of packaged liquor from supermarket premises; and reforming other minor restrictions.	The Government has implemented reforms, including removing the 9 litre rule but retained the ban on supermarket sales. It considered that the review's cost-benefit analysis underestimated the costs of reform and overestimated its benefits	Meets CPA obligations (June 2003)
ACT	Liquor Act 1975 (except ss 41E[2] and 42E[4])	Licensing of sellers	Review was completed in 2001. The restrictions contained in the Act were found to be in the public interest.	Minor amendments were made to the Act	Meets CPA obligations (June 2002)
Northern Territory	Liquor Act	Public needs test which allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence.	A draft final review report was prepared. The Government is still considering the report.	The Government accepted most findings. The Sunday takeaway trading issue has been referred to the Alcohol Framework project for further consideration. Legislative amendments to implement most of the recommendations were introduced into the Legislative Assembly in November 2003 and are scheduled for passage in 2004. (NCC 2004, p 10.22)	Review and reform incomplete



### 9.3 Petrol Retailing

Source: NCC 2003, p 7.30-7.31

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	Petroleum Products Pricing Amendment Act 2000	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres	Review of this Act and the Petroleum Legislation Amendment Act 2001 was completed in 2001. Restrictions were found to be in the public interest.  ACCC reports found, however, that the restrictions might have reduced competition, increased the rural/urban price differential and raised prices		Does not meet CPA obligations (June 2003)
	Petroleum Legislation Amendment Act 2001	Requirement that retailers fix their prices for at least 24 hours and notify these prices for publication on its FuelWatch web site; maximum wholesale price arrangements; the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier; mandatory price boards to be displayed in all regional centres.	Review of this Act and the Petroleum Legislation Amendment Act 2001 was completed in 2001. Restrictions were found to be in the public interest.  ACCC reports found, however, that the restrictions might have reduced competition, increased the rural/urban price differential and raised prices.		Does not meet CPA Obligations (June 2003)

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
	Environmental Protection (Diesel and Petrol Regulations) 1999	Setting of fuel standards above national standards, thus protecting the local refinery			Does not meet CPA Obligations (June 2003)
South Australia	Petrol Products Regulation Act 1995	Retail petroleum licences may be withheld if they provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet.	Review was completed in mid-2001. It found that the Act created a barrier to entry that protected industry participants without providing a net public benefit.	The Government is drafting legislation to phase out the current restrictions by June 2004. The phasing of reform provides an adjustment time for industry participants.	Review and reform incomplete
ACT	Fair Trading (Fuel Prices) Act 1993	Provision for the Government to impose price controls on fuels in certain circumstances	Intradepartmental review recommended retaining restrictions on public interest grounds. It is argued that provisions would be exercised only at times of widespread anticompetitive behaviour.	Restrictive provisions were retained.	Meets CPA obligations (June 2001)`
	Fair Trading (Petroleum Retail Marketing) Act 1995		Review was completed.	Act was repealed.	Meets CPA obligations (June 2001)

## 9.4 Shopping Trading Hours

Source: NCC 2003, p 7.7-7.10

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	Factories, Shops and Industries Act 1962 (part 4 covers trading hours)	No restrictions on Monday- Saturday trading hours; restrictions on Sunday trading and public holiday trading (but exemptions are readily granted)	Review of part 4 was completed. New South Wales advised that a comprehensive public benefit test is in place to assess remaining restrictions.	Widespread granting of exemptions has reduced the impact of restrictions.	Meets CPA obligations (June 2002)
Victoria	Shop Trading Act 1987 and the Capital City (Shop Trading) Act 1992	Restrictions on Saturday and Sunday trading hours depending on shop type and location	Review was completed in 1996.	Shop Trading Reform Act 1996 removed restrictions except for trading on Christmas Day, Good Friday and Anzac Day. Easter Sunday restrictions were introduced in 2003.	Meets CPA obligations (June 1999)

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland	Trading (Allowable Hours) Act 1990 and Regulations	Restrictions on Monday-Saturday trading hours for non-exempt shops (shops not predominantly selling nominated products); prohibition on Sunday trading by non-exempt stores outside major cities and tourist areas; exemption from restrictions for 'independent retail shops' (shops employing fewer than 20 employees and fewer than 60 Statewide).	Review was not undertaken. The Queensland Industrial Relations Commission determines applications for extended trading hours. This process includes a consideration of the public interest and has been assessed by the Council as being sufficiently public, independent and transparent.	Decisions of the Queensland Industrial Relations Commission to liberalise trading hours resulted in the removal of some restrictions.  In February 2002, the Government introduced amendments to the Act providing uniform Sunday trading hours for non-exempt stores in south-east Queensland from August 2002.	Meets CPA obligations (June 2003)
Western Australia	Retail Trading Hours Act 1987 and Regulations	Restrictions on Monday-Saturday trading; prohibition on Sunday trading outside tourism precincts, where it is restricted; no restrictions above the 26th parallel.	Initial review was completed in 1999. The review report was not published.  The current Government established a Ministerial taskforce to conduct a review of retail trading hours. The taskforce released a discussion paper but did not publish a report.	In June 2003, the Government announced that it would not change trading hours until 2005.  The retail Shops and Fair Trading Legislation Amendment Bill 2003 reflects this announcement and has passed the Legislative Assembly and had its second reading on 2 Dec 2003.(NCC 2004, p 6.73)	Does not meet CPA obligations (June 2003)

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	Shop Trading Hours Act 1977	Controls on the hours during which shops may open; variation in allowed opening hours based on the day of the week; variation in permitted opening hours depending on shop location, shop size and products sold; restrictions on Monday- Saturday trading hours; prohibition on most Sunday trading in the Adelaide metropolitan area except within the central business district, where hours are restricted	Review was completed in 1998. Review report is not publicly available.	Limited changes took effect from June 1999. Key restrictions were retained.  Extended trading hours were introduced in the Glenelg Tourist Precinct in December 2000.  In June 2003, Parliament legislated to extend Sunday trading to the suburbs between restricted hours and allow trading by larger stores to 9 pm on weeknights	Does not meet CPA obligations (June 2003)
Tasmania <sup>30</sup>	Shop Trading Hours Act 1984	Prohibition on major retailers (shops employing more than 250 people) trading during prescribed periods (Sundays, public holidays and weekdays after 6 pm other than Thursday and Friday).	Reviews were completed in 2000 and 2002, both recommending removal of restrictions.	Restrictions were removed with effect from 1 December 2002.	Meets CPA obligations (June 2002)
ACT	No specific shop trading hours legislation	After a period of liberal trading arrangements, reintroduction of restrictions for larger shopping centres in 1996.		Trading Hours Act 1962 was repealed in 1997 due to a lack of community support for trading hours restrictions.	Meets CPA obligations (June 1999)

---

<sup>30</sup> Tasmania chose not to include its pharmacy registration provisions in the review.

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
<i>Other Trading Hours legislation Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	Funeral Services Industry (Days of Operation) Act 1990	Regulates the days of operation of businesses providing funeral, burial or cremation services.		Act was repealed.	Meets CPA obligations (June 2001)
Queensland	Hawkers Act 1994 and Hawkets Regulation 1994	Prevents hawkers operating between 6 pm and 7 am.	A reduced NCP review was completed.	Act was repealed.	Meets CPA obligations (June 2002)
Tasmania	Sunday observance Act 1968	Restricts a number of business activities on Sunday		Act was repealed.	Meets CPA obligations (June 2001)
	Bank Holidays Act 1919	Restricts bank trading days		Act was reformed consistent with NCP principles.	Meets CPA obligations (June 2001)
	Door to Door Trading Act 1987	Restricts the hours in which door to door sellers can operate.	A minor review of this Act was completed and the restrictive provisions were justified as being in the public interest.		Meets CPA obligations (June 2002)
ACT	Door to Door Trading Act 1991	Restricts the hours in which door-to-door sellers can operate.	Intradepartmental review was completed in 2001. The review concluded that the restrictions provide a net public benefit.	Act was retained without reform.	Meets CPA obligations (June 2002)
Northern Territory	Hawkers Act	Restricts selling by hawkers on land that is reserved or dedicated as a public road	Review was completed in August 2000.	Act was repealed.	Meets CPA obligations (June 2001)



