

Regulation Review

Introduction

B.1 This Inquiry has been commissioned by the Commonwealth Government to fulfil its commitment under the Competition Principles Agreement (CPA) in respect of the main financial sector regulations. In letters of appointment, the Treasurer informed the Committee that the Inquiry was to be included in the Commonwealth's Legislative Review Schedule prepared in response to the April 1995 Inter-governmental Competition Agreement. This Appendix provides an overview of the national competition policy so far as it is relevant to this Inquiry.

Background

B.2 In April 1995, the Council of Australian Governments agreed to a process of legislative review as part of the CPA. The CPA is one of several inter-governmental agreements which give effect to the competition policy reforms, based largely on the report on National Competition Policy.¹

B.3 The CPA requires all Australian governments to develop, by June 1996, a 4-year program to review all existing legislation (including Acts, ordinances and regulations) which significantly restricts competition. Any such legislation must be reformed by the year 2000, unless it can be demonstrated to be in the public interest not to do so, using criteria specified in the CPA.

1 Independent Committee of Inquiry (Hilmer Committee) 1993.

B.4 Each government has determined its own agenda for the reform of its legislation.² Relevant to this Inquiry are the processes that have been adopted by the Commonwealth Government.

B.5 The Commonwealth's legislative review program is broader than required by the CPA. The scope of the Commonwealth's review program was widened by the previous Government to cover legislation imposing costs on, or benefiting, business, thereby fulfilling a commitment made in the *Working Nation* Statement of 1994.

B.6 At the end of June 1996, the Commonwealth's consolidated review schedule was made public. The schedule lists 98 separate reviews, of which 13 are already in progress. The remaining 85 will be conducted over the next 4 years. Included in that schedule is this Inquiry into the financial sector.

B.7 Reviews of legislation restricting competition must satisfy the requirements of the CPA, which states that reviews are to:

- clarify the objectives of the legislation;
- identify the nature of the restriction on competition;
- analyse the likely effect of the restriction on competition and on the economy generally;
- address and balance the costs and benefits of the restriction; and
- consider alternative means for achieving the same result including non-legislative approaches.³

B.8 The CPA indicates that, where relevant, the following shall be taken into account when balancing the benefits and costs of a legislative restriction on competition:

- government legislation and policies relating to ecologically sustainable development;

2 Further information relating to the national program of legislative review is contained in Industry Commission 1996.

3 Council of Australian Governments; *Competition Principles Agreement*, 11 April 1995, Clause 5(9).

- social welfare and equity considerations, including community service obligations;
- 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 of a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.⁴

B.9 Thus, although competitive and economic impacts are the prime triggers for review, they are not the only determinants of the recommendations of reviews. Non-economic and social objectives must be taken into account when assessing whether, on balance, particular regulatory action is in the public interest.

B.10 With respect to the Commonwealth's review program, the legislation selected for review because of its impact on business must be assessed in a manner consistent with the Commonwealth's Regulatory Impact Statement (RIS) requirements. There is substantial similarity between the CPA review guidelines and the RIS requirements.

B.11 The Commonwealth has agreed that its legislative reviews should be conducted in public and allow for public consultation unless this would be excessively costly.

⁴ Council of Australian Governments; *Competition Principles Agreement*, 11 April 1995, Clause 1(3)(d)-(j).

Methodology of the Review

B.12 The Inquiry is charged with making recommendations on the nature of the regulatory arrangements that will best ensure an efficient, responsive, competitive and flexible financial system, consistent with financial market stability, prudence, integrity and fairness.

B.13 Consistently with the requirements of the CPA, the legislative review within the Inquiry is to identify the issues relating to the regulatory framework where the potential restriction on competition is significant, or where the costs imposed on business may be substantial.

B.14 The Final Report will relate the Inquiry's legislative review findings to the CPA's framework of issues.

Regulations Subject to Review

B.15 A complete list is provided in Table B.1 of primary legislation which will be reviewed in the course of this Inquiry and references to the chapters of this Discussion Paper where discussion related to this legislation is presented. In many cases, anti-competitive effects may derive not from the Acts themselves but from subordinate instruments (such as prudential statements, Commissioner's circulars or Class Orders), in which case they too will be subject to review.

B.16 The regulation review task is limited to Commonwealth legislation. While the comparability of requirements imposed on like products or institutions by State/Territory legislation will be taken into account, the Inquiry is limited to making recommendations about Commonwealth laws affecting the financial system.

Table B.1: Legislation Reviewed by this Inquiry under the Competition Principles Agreement

Primary Legislation	Chapter
Banking Act 1959	6, 7, 8
Banking (Foreign Exchange) Regulations	7
Banks (Shareholdings) Act 1972	6, 7
Corporations Law	5, 8
Financial Corporations (Transfer of Assets and Liabilities) Act 1993	7
Insurance (Agents and Brokers) Act 1984 and Regulations	8
Insurance Acquisitions and Takeovers Act 1991 and Regulations	6, 7
Insurance Act 1973 and Regulations	7
Insurance Contracts Act 1984 and Regulations	8
Insurance and Superannuation Commissioner Act 1987	7
Insurance Supervisory Levies Collection Act 1989	7
Life Insurance Act 1995	7, 8
Life Insurance Supervisory Levy Act 1989 and Regulations	7
Superannuation Industry (Supervision) Act 1993 and Regulations	5, 8