ATTACHMENT A

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NCP review of the Northern Territory Consumer Affairs and Fair Trading Act

Prepared for

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Summary

THIS REVIEW OF THE *CONSUMER AFFAIRS AND FAIR TRADING ACT* (CAFTA) has been conducted as part of the Northern Territory government's commitments under National Competition Policy (NCP). This report briefly describes NCP principles and procedures and provides some background information about the act and its broad structure. Subsequent sections then examine each part of CAFTA, following the steps that must be taken in any NCP review, namely to:

- clarify the objectives of the legislation;
- identify the nature of restrictions on competition;
- analyse the likely effects of the restrictions on competition and on the economy generally;
- assess the balance between the costs and benefits of the restrictions; and
- consider alternative means of achieving the same results including nonlegislative approaches.

The review team conducted a range of interviews with stakeholder groups and produced an issues paper inviting submissions on issues raised. The review was widely advertised in Northern Territory newspapers by the Department of Industries and Business. The review received two written submissions.

Background to CAFTA

CAFTA was enacted in 1990 with aim of consolidating and replacing a range of separate pieces of legislation to bring about consistency of definition, administration and enforcement in areas of regulation concerned with consumer protection.

CAFTA has an over arching objective of consumer protection. Individual parts of the Act have a range of subsidiary objectives aimed at protecting consumers from a range of risks that might emerge in a variety of different markets.

A number of provisions in the various parts of CAFTA have anti-competitive effects on the markets that they regulate. The specific parts containing anti-competitive restrictions are:

- Part 4: Product Safety and Product Information;
- Part 7: Door to Door Trading;
- Part 8: Fair Reporting;
- Part 9: Trading Stamps;
- Part 10: Motor Vehicle Dealers;
- Part 12: Credit Providers;
- Part 13: Codes of Practice; and
- Part 14: Pawnbrokers and Second Hand Dealers.

Part 11, which regulates the behaviour of travel agents, also contains a number of anti-competitive provisions but has been reviewed elsewhere and is not covered by this review.

The task for the review was to examine whether the anti-competitive restrictions deliver net benefits to the community and whether the are alternate, less restrictive and less costly ways of delivering regulatory objectives. The review's findings under each of the restrictive parts of CAFTA are discussed below.

Part 4: Product Safety and Product Information (chapter 4)

The review identified two anti-competitive provisions contained in Part 4:

- restrictions on the sale of dangerous goods; and
- energy labelling requirements for a range of household appliances.

Restrictions on the supply of dangerous goods

The restrictions on the sale of dangerous goods were found to deliver net benefits to the community, generated mainly through the protection of public health. The range of powers available to the Minister in dealing with dangerous goods suggests that there is much scope within the existing provisions of Part 4 to deliver the public health and safety objectives of regulation at minimum cost to consumers and suppliers.

The review team recommends that the powers relating to restrictions on the supply of dangerous goods be retained.

Energy labelling requirements

The energy labelling requirements imposed under Division 4 of Part 4 seek to increase the information available to consumers to enable them to make informed choices between energy consuming products. The over-riding aim is to promote energy conservation and reduce energy demand.

The labelling requirements have been introduced as part of a uniform national approach to energy labelling. As part of that national approach, the Australian Greenhouse Office produced a regulatory impact statement (RIS) which demonstrated that the energy labelling requirements delivered a net benefit to the community – greater than could be achieved through a voluntary approach.

The RIS found that the principal benefits of the energy labelling requirements are generated through cost savings to households from more efficient appliances and also lower greenhouse gas emissions. Partially offsetting these benefits were costs to government, industry and also consumers. The RIS found that the net benefits to the Northern Territory were expected to be higher than the national average reflecting the higher energy use of appliances relative to cooler states.

In view of the findings of the RIS that mandatory labelling requirements deliver positive net benefits to the community, the review team recommends that the energy efficiency labelling requirements be retained.

Part 7: Door to Door Trading (chapter 5)

Part 7 regulates the conduct of door-to-door trading activity, including telemarketing activity, in the Northern Territory. The review found that there were three ways in which Part 7 restricted competition:

- restrictions on trading hours — door-to-door traders are restricted from trading at times when other types of traders/distribution channels are open;
- requirement for a 10 day cooling off period — consumers have to wait at least 10 days for their products in contrast to other types of traders who may be able to offer immediate delivery; and

- mandated requirements with respect to contracts that could represent a cost burden for traders affecting their competitiveness.

The review found that the objectives of regulation are:

- to protect consumers from hard sell and high pressure sales tactics during uninitiated contact from salespersons;
- to protect consumers from fraudulent or incompetent traders; and
- to protect public amenity and safety by restricting the hours that traders may call upon householders.

The mandatory cooling off period was found to deliver net benefits to the community through the protection it offers to consumers that might be susceptible to high pressure sales tactics. These benefits are likely to be higher for groups who are more vulnerable to such tactics due to inexperience, age, cultural background or understanding of English.

There are also clear net benefits from restricting traders from calling late in the evening. Benefits are generated through the protection of public amenity and, more importantly, the protection of public safety.

Less clear cut is the merit of the restriction on Sunday or public holiday trading. Unlike other retailers, door-to-door traders are restricted from operating on Sunday and public holidays. This potentially creates costs to traders from foregone sales and also to their customers who are prevented from making purchases from their homes. Balanced against these costs are the benefits that householders receive from not being interrupted by traders that they have no desire to trade with. On the balance of evidence presented to the review, the review team concluded that the restriction on Sunday and public holiday trading offers a net public benefit.

The review team considers that prescribed requirements for contracts are unlikely to impose significant costs on traders but offer benefits in making sure that consumers are aware of their rights under Part 7.

The Australian Direct Marketing Association operates a national code of conduct for telemarketing activity. The review considered whether this would offer a feasible alternative to the current regulation of telemarketing activity under Part 7. However, in view of the voluntary nature of the code and the less than full coverage of the industry, the review team was unable to conclude that this offers greater net benefits than the current approach. A 'no specific regulation' option was also ruled out.

The review team considers that the provisions under Part 7, while restricting competition, offer a net benefit to the community that could

not be achieved by other means. The review team recommends that the provisions be retained.

Part 8: Fair Reporting (chapter 6)

The fair reporting provisions of Part 8 apply to all reporting agencies and provide for:

- certain limits on what may be included in a reporting agency report;
- a duty of disclosure of traders to notify consumers where a report of a reporting agency has been utilised and the consumer has been a benefit;
- a requirement on reporting agencies to disclose information relating to a person when requested by that person; and
- rights of persons to have inaccurate information investigated and corrected.

These provisions potentially restrict competition through their impact on the costs of reporting agencies.

The review was not able to demonstrate that provisions of Part 8 yield a strong net benefit to the community. This is primarily due to the fact that the provisions of the Part 8, as they relate to consumer credit information at least, are duplicated by the federal *Privacy Act* and its related Credit Reporting Code of Conduct. Commercial credit information is not covered by the Reporting Code but major reporting agencies have voluntarily extended its provisions to commercial credit.

The net incremental costs and benefits are therefore restricted to non credit related information. However, the importance of regulating access to such data has not been demonstrated to the review.

In the absence of a demonstrated net benefit, the provisions of Part 8 should be rescinded under the NCP protocol. However, the attention of the review team was drawn to an emerging issue related to residential tenancy databases that is currently being examined by the Ministerial Council on Consumer Affairs and the Standing Committee on Consumer Affairs. The Standing Committee is awaiting a report on the issue from the New South Wales Council of Social Services. One option in dealing with problems of residential tenancy databases is for jurisdictions to introduce provisions similar to those under Part 8 of CAFTA. The review team is reluctant to recommend the removal of the fair reporting provisions of CAFTA until this issue is resolved.

The incremental net benefits of Part 8 of CAFTA have not been demonstrated and, under the NCP protocol, Part 8 of CAFTA should be rescinded. However, the review team recommends that any action be deferred until the report of the New South Wales Council of Social Services on residential tenant databases is received by SCOCA and any implications for the fair reporting provisions of Part 8 are determined.

Part 9: Trading Stamps (chapter 7)

Part 9 contains provisions for the prohibition of specified trading stamps. The following trading stamps are prohibited:

- third party trading stamps provided in connection with a third party trading stamps scheme that does not comply with prescribed conditions; and
- trading stamps provided in connection with the sale of tobacco and tobacco products.

Third party trading stamps

The original provisions for third party trading stamps completely prohibited all such stamps. The objective was to avoid situations where consumers were harmed when retailers, not part of a particular trading stamp promotion, refused to honour the third party stamps issued under that scheme. However, amendments to CAFTA in 1996 provided for regulations to be made that specified the conditions with which third party trading stamps must comply. These amendment were made following concerns that points-based reward schemes were unintentionally covered by the ban.

To date, no regulations have been made and so there are currently no restrictions on third party trading stamps in the Territory. The third party trading stamp provisions are, therefore, not considered to be a restriction on competition. However, these provisions do generate uncertainty for firms who may wish to promote their products using these instruments (points-based reward schemes are one such example).

The review team recommends that the Department prescribe the conditions for third party trading stamp schemes that are necessary for consumer protection. If no conditions are deemed necessary, then the provision relating to third party trading stamps should be removed.

Tobacco-related trading stamps

The restrictions on tobacco-related trading stamps has a public health objective and is seen as part of a suite of measures on the National Tobacco Strategy which is guiding the tobacco policies of all state and territory governments in Australia. The ban represents a restriction to competition since it restricts the ability of tobacco companies to promote their product.

The net benefits of the ban on tobacco-related related trading stamps can only be sensibly be evaluated in the context of the other measures of the National Tobacco Strategy — something that is outside the scope of this review.

However, the review team notes that the potential benefits of reducing tobacco consumption are substantial with estimates of the costs associated with tobacco consumption estimated to be at least $12.7 billion annually. A key component of the strategy is to limit the promotion of tobacco products through measures such as the *Tobacco Advertising Prohibition Act 1992* and other restrictions on point of sale advertising and value added promotions. Removing the ban on tobacco-related trading stamps could provide a legal avenue for companies to promote their products and undermine these other measures in the strategy.

In line with the Northern Territory government's other tobacco control policies, the review team recommends that the ban on trading stamps related to the promotion of tobacco products remain. Should these other tobacco control policies be found to deliver a net cost to the community, either through the NCP review process or other review process, then the ban on tobacco-related trading stamps should be lifted.

Part 10: Motor Vehicle Dealers (chapter 8)

Motor vehicle dealers are licensed under Part 10. The provisions restrict competition in four broad ways:

- restrictions on entry facing motor vehicle dealers— the right to act as a dealer is restricted to those meeting the requirements to hold a licence such as being a fit and proper person and having sufficient financial and material resources to conduct business;
- restrictions on entry facing dealers' managers — only persons regarded as fit and proper persons can be approved as dealers' managers;
- restrictions on the way dealers operate their businesses — dealers have to keep certain records, display their licences, utilise prescribed forms

of contract, submit annual returns and are prevented from selling certain vehicles such as those registered interstate; and

- minimum warranties — the requirement for statutory warranties imposes a cost on dealers and also potentially crowds out the provision of other services such as pre-purchase inspection or privately provided warranties.

The review has identified four objectives for regulation:

- to reduce the risk of dealer default;
- to reduce costs associated with the possible imbalance of information between consumers and dealers on the quality of a prospective vehicle purchase;
- to reduce avenues for disposal of stolen vehicles; and
- to promote fair trading in the motor vehicle dealers market.

The review team is satisfied that the regulation of motor vehicle dealers delivers net benefits to the community. The review has considered an alternative model involving negative licensing with co-regulatory administration of a mandatory Code of Practice. The negative licensing approach is inconsistent with the financial and material resources test and the fit and proper person test that is applied to new entrants.

The review team recommends that the current positive licensing framework be retained.

A code of practice was not considered to offer additional benefits over the current approach if a positive licence is retained.

A co-regulatory industry licensing board approach is unlikely to offer much in the way of improving licensing outcomes but may offer gains in terms of resolving disputes between dealers and consumers. Whether such an approach offers better dispute resolution outcomes was something that was not demonstrated to the review team.

The review team recommends that DIB/Consumer Affairs, in light of its experience with consumer complaints in the motor vehicle dealer sector, consider whether the industry board model would yield a more efficient dispute resolution process than current arrangements. The review team also draws the attention of the Department to the MTA's proposal for regulation of the wider motor trades industry.

While regulation as a whole delivers net benefits to the community, there are a number of changes to Part 10 that could be made in order to reduce the cost of meeting regulatory objectives.

The review team recommends:

- **that the requirement that licensees submit annual financial returns be removed;**
- **that the financial test applied to applicants for new licences be formalised to make requirements clearer for potential entrants;**
- **that the powers to require a banker's guarantee be removed from the Act; and**
- **that the requirements for approval of dealer managers be removed.**

Part 12: Credit Providers (chapter 9)

Part 12 provides for the negative licensing of credit providers and restricts competition by limiting entry into the market for consumer credit to credit providers that:

- abide by the provisions of the *Consumer Credit Code;* and
- otherwise act properly, competently and fairly.

The restriction created by the *Consumer Credit Code* is currently being reviewed nationally in a separate review and is not considered by this review.

The provision requiring credit providers to act properly, competently and fairly provide the Commissioner with powers to deal with improper or unfair behaviour that is not covered by the *Consumer Credit Code.* The benefits of this restriction are therefore largely related to the avoidance of consumer losses from such behaviour. On the cost side, the negative licensing approach limits the cost impost on industry participants. The requirement to act properly, fairly and competently is unlikely to create any costs for the vast majority of industry participants who would act that way anyway as a matter of good business practice.

The review team recommends that the power for the Commissioner to request a credit provider to execute a deed of assurance if the credit provider acts improperly, negligently or unfairly be retained.

Part 13: Codes of Practice (chapter 10)

Codes of practice for fair dealing can be prescribed under Part 13. Currently, only one code has been prescribed under CAFTA – the Tow Truck Operators Code of Practice. The Code was introduced to address problems in the tow truck industry, primarily related to the conduct of tow truck operators at police controlled accident sites.

The Code restricts competition in four broad ways:

- through the operation of a roster system that divides the market for towing from police controlled accident sites among roster participants;
- through the imposition of certain minimum operational standards that impose costs on operators seeking to be part of the roster system;
- through the prohibition of certain payments such as off the hook transactions or spotters fees that have been used by operators in the past to expand their market share; and
- through the provision for the Administering Authority to prescribe fees (although none a currently prescribed).

The Code of Practice offers significant public benefits in terms of avoiding the type of undesirable behaviour that has been seen in jurisdictions where attendance at accident sites is unregulated. This behaviour includes:

- ongoing incidents of property damage and personal injury as tow trucks 'race' to the scene of accident;
- harassment of vehicle drivers by tow truck operators trying to get business at the accident scene;
- violent behaviour against some tow truck operators by other operators attempting to secure a tow; and
- payment of 'drop fees' or secret commissions by smash repairers to tow truck operators, and the loading of these fees into repair costs.

Over the past forty years, a number of alternative models have been tried but have been rejected in favour of the current approach. It is unlikely that circumstances have changed such that it would be worthwhile revisiting these models. Further, there is not strong support from industry to revisit older models.

The review team also considered a model involving a single contract tower. The review found that such a model is unlikely to offer significant additional benefits over the present approach but carries with it the risk that it will significantly affect the structure of the towing sector in the Territory. The review concluded that the present model should be retained.

The review team recommends that the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations* be retained.

Current practice is for police to offer accident victims the option of electing a tower of choice in preference to a rostered tow. This is not a requirement of the Code but, as long as other arrangements remain in place, the review team feels that it should be.

The review team recommends that the right for all consumers to opt for a tow of their choice be formalised in the regulations.

Part 14: Pawnbrokers and Second Hand Dealers (chapter 11)

The provisions covering pawnbrokers and second hand dealers were introduced into CAFTA in 1996. The principal objectives of regulation relate to the prevention of disposal of stolen property and providing assistance to the police in the efforts to track and recover stolen goods. A subsidiary objective in relation to pawnbroking regulation is to clarify the rights of consumers in respect of pawn contracts.

Two restrictions to competition are created by Part 14:

- restrictions on entry — licensing restricts entry to those over the age of 18 who are not undischarged bankrupts or have been convicted in the last 10 years of an offence involving dishonesty, fraud or stealing; and
- restrictions on the way dealers and pawnbrokers operate their business — for example, requirements for minimum redemption and holding periods for goods, record keeping, checks on identification and prescribed arrangements related to contracts.

Regulation generates benefits through

- the impact on the level of crime and/or recovery of stolen goods facilitated by the provisions;
- any flow on benefits to the industry created as a result of tighter controls over participation and practices within the industry; and
- consumer benefits arising from increased transparency and clarification of their rights in dealing with pawnbrokers.

Balanced against these benefits are costs primarily borne by industry in complying with the operational requirements. Government also bears costs through administering the licensing system although it passes these costs onto industry through licence fees. On balance, the review team considered that the benefits outweighed the costs of regulation.

The review has considered alternative models for implementing control over the second hand dealer and pawnbroking activities but none of these alternative models has clear advantages over the present approach. The closest contender is a negative licensing/registration model applied in some other Australian jurisdictions. That model offers lower costs to industry but at the expense of shifting costs to the enforcement agency, reducing the efficiency of the enforcement task and also increasing consumer risk.

The review team recommends that the provisions of Part 14 be retained.

1 What is this review about?

THE CENTRE FOR INTERNATIONAL ECONOMICS (CIE), a private economic research consultancy, in conjunction with Desliens Business Consultants has been commissioned by the Department of Industries and Business to undertake an independent review of the *Consumer Affairs and Fair Trading Act*. This review is being conducted in accordance with the principles for legislation review set out in the Competition Principles Agreement (CPA) entered into by all members (Commonwealth, states and territories) of the Council of Australian Governments in 1995.

The review forms part of the Northern Territory government's obligation under the CPA to review and, where appropriate, reform all laws that restrict competition by the year 2000. Legislative reviews along NCP lines are currently being undertaken of similar acts in other states.

This report outlines the review team's findings and reflects discussions with DIB officers, views expressed by stakeholders in both interviews and in submissions, comments by members of an independent steering committee and the review team's own research.

Consultations

In undertaking this review we have consulted with stakeholders and asked for submissions from any interested parties. All identified stakeholders were contacted and invited to participate in the review.

An issues paper, designed to facilitate consultations and the preparation of submissions, was distributed in June this year. The review was widely advertised in Northern Territory newspapers and also on the Department's website.

Two submissions were received by the review from a member of the Consumer Affairs Council and the Motor Trades Association (Northern Territory).

In addition, members of the review team met or spoke with representatives from:

- DIB in both Darwin and Alice Springs;
- the Consumer Affairs Council;
- the Motor Trades Association (NT);
- the Northern Territory Chamber of Commerce in Darwin and Alice Springs;
- the Northern Territory Police;
- Tangentyere Council;
- AIM insurance;
- Credit Advantage Ltd;
- Territory Health Services;
- the Commonwealth Department of Health and Aged Care;
- the Office of the Federal Privacy Commissioner; and
- the Australian Securities and Investment Commission.

2 What is the National Competition Policy about?

NATIONAL COMPETITION POLICY REPRESENTS a commitment by all Australian governments to a consistent national approach to improving the overall efficiency and competitiveness of the Australian economy. Reviews of potentially anticompetitive legislation are part of this approach. A key objective of National Competition Policy is to develop more open and integrated markets in all sectors of the economy. The idea is to promote competition where it will encourage more efficient use of resources, stimulate cost reductions and bring quality improvements.

National Competition Policy assumes that competition is generally desirable *unless* a legislated restriction can be shown, on a case-by-case basis, to deliver socially beneficial or desirable outcomes that are greater than those with no such restrictions in place. The specific test is contained in the Competition Principles Agreement is that legislation should not restrict competition unless it can be shown that:

- the benefits of the restriction to the community as a whole outweigh the costs (of the restriction); and
- the objectives of the legislation can only be achieved by restricting competition (Clause 5(1) of the *Competition Principles Agreement*).

It is significant to note that *both* of these criteria are required to be met if a restriction is to be retained. This means that even if a restriction passes a net public benefit test, it should not be retained if there are other less restrictive ways of achieving that outcome. Also, if a restriction is to be retained it is necessary to demonstrate that to keep it will result in a public net benefit. It is not sufficient to demonstrate that its removal would result in no or little net benefit.

It is important when assessing the benefits and costs of a restriction that distinctions are made between private benefits and costs, industry benefits and costs and community wide benefits and costs.

There are a range of public interest issues that are to be taken into account where relevant in assessing the benefits and costs of any restrictions. These include, but are not limited to:

- ecological sustainability;
- social welfare and equity;
- occupational health and safety;
- industrial relations and access and equity;
- economic and regional development including employment and investment growth;
- interests of consumers;
- competitiveness of Australian businesses; and
- efficient resource allocation.

Thus, NCP recognises that unrestricted competitive markets may not result in best community outcomes. However, the NCP and the legislative review process is underpinned by the view that free interactions between consumers and producers result in broadly based benefits throughout the community.

This does not mean that fewer rules and restrictions would necessarily be better. Competition itself cannot operate outside a framework of trust which is underpinned by general commercial, industrial, health and safety, and environmental laws.

3 The Consumer Affairs and Fair Trading Act

The *Consumer Affairs and Fair Trading Act* (CAFTA), was enacted in 1990, consolidating and replacing a range of separate legislation including the *Door to Door Sales Act*, the *False Advertising Act*, the *Motor Vehicle Dealers Act*, the *Unordered Goods and Services Act* and the *Trading Stamps Act*. The intention of introducing a single, consolidated act was to achieve consistency of definition, administration and enforcement across a number of areas of regulation aimed at consumer protection.

The protection of consumer interests lies at the heart of the various provisions of CAFTA. This broad, overarching objective is achieved through the protection that the various Parts of the Act offer against different forms of consumer risk. The nature of these risks are discussed in following chapters.

Table 3.1 describes the various components of the Act. There are a number of potential restrictions to competition contained in CAFTA that need to be examined under this review. These restrictions are contained in the following parts and the associated implementing regulations:

- Part 4: Product Safety and Product Information;
- Part 7: Door to Door Trading;
- Part 8: Fair Reporting;
- Part 9: Trading Stamps;
- Part 10: Motor Vehicle Dealers;
- Part 11: Travel Agents
- Part 12: Credit Providers;
- Part 13: Codes of Practice; and
- Part 14: Pawnbrokers and Second Hand Dealers.

Parts 5 and 6 contain a number of general provisions governing fair trading, conditions and implicit warranties. These sections are largely

3.1 Description of the components of CAFTA

Part and associated regulation	*Description*	*Restrictions to competition*
Part 1 — Preliminary Part 2 — Consumer Affairs Commissioner and Council Part 3 — Authorised Officers	Establishes definitions contained within the ACT, provides for the appointment of Commissioner of Consumer Affairs and Consumer Affairs Council, and establishes the rights and obligations of authorised offers.	None
Part 4 — Product Safety and Product Information Consumer Affairs (Product Information) Regulations	Provides for prescription of certain product safety standards and product information requirements. Regulation requires certain domestic electrical appliances to display information on energy consumption and efficiency.	Cost of complying with requirement to display energy consumption and efficiency information Bans on deemed dangerous goods
Part 5 — Fair Trading, Conditions and Warranties implemented Part 6 — Enforcement of Part 4 and Part 5, Division 1	Provisions mirroring those contained in the Commonwealth Trade Practices Act 1974.	None
Part 7 — Door-to-door Trading Consumer Affairs and Fair Trading (Door-to-Door Trading) Regulations	Prescribes requirement for the Content of contracts Conduct of door-to-door sales people Rights of consumers to rescind contracts.	Imposes minimum standard for contracts Restricts hours that dealers can call Provides for cooling off period that does not apply for other types of sellers
Part 8 — Fair reporting	Governs the types of information that may be included in prescribed reports, and provides for duty of disclosure for traders and reporting agencies and rights and obligations for correction of errors.	Limits on the type of information that may be included in reports Specifies certain duties of disclosure and rights of consumers
Part 9 — Trading Stamps	Provides for the prohibition of certain trading stamps.	Restriction of trading stamps associated with the sale of tobacco products
Part 10 — Motor Vehicle Dealers Motor Vehicle Dealers Regulation	Provides for the licensing of motor vehicle dealers. Specifies certain conduct requirements for dealers including keeping of dealings register. Requires provision of minimum warranty.	Restrictions on entry though licensing requirement Fit and proper person Financial requirements Compulsory warranties crowd out private provision/services. Potential disadvantage vis-à-vis private market and auctions Imposition of compliance costs
Part 11 — Travel Agents	Provides for licensing of travel agents and imposes certain conduct requirements.	Not covered by this review
Part 12 — Credit Providers	Provides for addressing breaches of Consumer Credit Code. Establishes the Consumer Credit Fund for the purposes of the Consumer Credit Code.	Compliance with *Consumer Credit Code* — not covered by this review Requirement that credit providers behave properly, fairly and competently
Part 13 — Codes of Practice Consumers Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations	Provides for prescription of mandatory codes of conduct enforceable under the Act. Currently only tow truck operators code of practice specified. This code provides for Establishment of Administering Authority Establishment of rostering system Standards for premises and behaviour at accident sites	Work allocated according to roster system Minimum standards for operators Certain payment types, such as spotter fees or 'off the hook' arrangements, illegal Provision for control of prices

(Continued on next page)

3.1 Description of the components of CAFTA (continued)

Part and associated regulation	*Description*	*Possible restrictions to competition*
Part 14 — Pawn-brokers and second-hand dealers Consumers Affairs and Fair Trading (Pawn-brokers and second-hand dealers) Regulations	Requires the pawnbrokers and second-hand dealers be licensed. Licensees are required to keep certain records. Act also provides for specified powers of inspection by police. Certain conduct requirements for the sale of goods and redemption of pawned property.	Restrictions on entry through licensing (fit and proper person) Restrictions on when good may be sold Compliance costs associated with record keeping
Part 15 — Miscellaneous Part 16 — Repeals, Savings and Transitional provisions	Miscellaneous provisions.	None

mirrored from the Commonwealth *Trade Practices Act 1974*. The provisions are aimed at protecting consumers from, and providing remedies to the actions of dishonest and unfair traders. As such, the review team does not consider them to be restrictions to competition in a market, rather these provisions establish the rules of 'fair play' within a market. The issues paper for this review invited stakeholders to comment on whether these provisions had an adverse effect on competition. The review received no submissions arguing that these provisions were anti-competitive. The review team is satisfied that provisions of Parts 5 and 6 are, in fact, pro-competitive.

The restrictions affecting travel agents in Part 11 have been reviewed elsewhere and are not part of this review.

The restrictions contained in the remaining sections of the Act are discussed in more detail in the following chapters.

Situations where there are powers but no actual restrictions

CAFTA provides for a range of powers for establishing regulations that are potentially anti-competitive. In most cases, where they *have* been invoked, these powers have been invoked to address a particular consumer protection or fair trading issue. In other cases, such powers have not been used. The power to prescribe product safety standards under Part 4 and to prescribe conditions for third party trading stamp schemes are examples where such powers have not been utilised. In the latter case, there is no explicit restriction or regulation to be examined in the present review. In line with the NCP protocol, if these powers *are* used to introduce new regulations/restrictions, a net public benefit test must be conducted to ensure that the proposed regulation delivers net benefits to the community. This is the so-called, 'gatekeeper' role of NCP.

It is possible that, where powers under CAFTA have not been applied, the fact that the powers *could* be applied may affect behaviour, affecting costs and competition in an industry. That is, the powers may add to the sovereign risk faced by a particular firm or industry. Such impacts are more likely to occur when powers refer to a specific industry or a specific product. However, where a power is specified in more general terms (for example, the powers to specify product safety standards under Part 4 which do not refer to any industry or product), it is unlikely to increase the level of sovereign risk over that generated by the overall power of government to regulate.

In reviewing the legislation, the review team has attempted to identify situations where these 'unused' powers are leading to problems and has made recommendations for improvement.

4 Part 4 Product Safety and Product Information

PART 4 OF CAFTA PROVIDES for the prescription of minimum product safety standards and product information requirements for goods sold in the Northern Territory. The Minister can also ban or restrict the sale of any goods classified as dangerous under this part.

Minimum safety standards

Under Division 1, the government may specify regulations that prescribe minimum product safety standards for specified goods. These may consist of requirements to the design and content of goods, pre-sale testing, information to be included and any equipment or accessories to be supplied with the controlled goods. The Minister has the power to order a supplier of products that do not meet minimum safety standards to recall such products.

Currently, there are no regulations governing minimum standards in place in the Northern Territory. As such there are no explicit restrictions on competition to be reviewed. Further, the powers specified under Division 1 are broadly specified and are unlikely to add to sovereign risk for any given industry or firm. Since there are no restrictions to review, there is no need to perform the remainder of the steps in the NCP review process.

Restrictions on the supply of dangerous goods

Division 2 provides for the power of the Commissioner to investigate whether certain goods are dangerous or are a potential source of danger to health. If it is established that the goods are dangerous, the Minister may, by notice in the *Gazette*:

- prohibit the supply of the goods in the Territory; or
- restrict the supply of the goods in the Territory.

The Commissioner has the power to establish a committee consisting of persons with expertise in product safety to investigate whether products are a danger, or possible danger, to public health. The committee has the power to require persons to give evidence and also conduct tests on products under investigation.

The effect of these provisions is to restrict the sale of dangerous goods in the Northern Territory and has a clear anti-competitive effect on markets where the restricted dangerous goods are sold. In the absence of these restrictions, sellers of competing products would face competition from the restricted products that have been adjudged dangerous or faulty.

There are a number of goods that have been banned in the Northern Territory including:

- balloon blowing kits containing toxic substances liable to cause brain damage;
- imported crockery coated with lead based paint;
- a medicine glass that had inaccurate dosage marks;
- certain devices capable of firing projectiles in a dangerous manner such as slingshots, crossbows and dart guns;
- toy telephones that failed sound tests;
- a strongly alcoholic beverage packed in a bottle resembling a baby feeding bottle;
- some toys that expand in water creating a choking hazard for children;
- a candle that emitted toxic gasses when lit; and
- pool filters that lack a protective device preventing persons becoming caught in the filter.

Two items also face restrictions on their sale. These are slingshots that can only be sold to those over 18 years of age, and an animal shaped oven mitt, which was inadequate for use as a mitt but could be sold as a hand puppet.

Goods have been banned for two broad reasons:

- the product itself is faulty – for example, it contains or emits toxic substances or is easily broken creating a hazard to health; or
- the product, when used inappropriately, could lead to injury – for example, slingshots that might be fired at persons, alcoholic beverages in baby bottled shaped containers.

Mutual recognition

The *Mutual Recognition Agreement* provides for the recognition within each state and territory of regulatory standards adopted elsewhere in Australia regarding goods. This agreement was extended to incorporate New Zealand under the *Trans-Tasman Mutual Recognition Arrangement*. Under Mutual Recognition, goods which meet the requirements for sale in one state or territory are able to be sold in any other state or Territory or New Zealand without being required to undergo further assessment.

Mutual recognition poses problems for goods which may be restricted in one jurisdiction but not in others. The review team understands that the various jurisdictions are working on ensuring uniformity in enforcement and harmonisation of such standards.

Objective of provisions restricting the supply of dangerous goods

It seems reasonably clear from the above list that the objective of the dangerous goods provisions of Part 4 is the protection of public health and the principal benefits of regulation are in the form of avoided costs of any detriment to public health generated by the dangerous goods. This objective is implicit in section 28 which states:

> The Commissioner may, and on the direction of the Minister shall, investigate the question whether particular goods, or goods of a particular class or description, are of such a nature as to be dangerous to health or a possible source of danger to health. (*Consumer Affairs and Fair Trading Act*, Section 28).

Net benefits of restrictions on the supply of dangerous goods

Benefits

Few would argue that there are not significant benefits from protecting the community from unsafe or hazardous products. For example, problems with unprotected pool filters can cause serious injuries to persons caught in the suction from pumps. In New South Wales, prior to the introduction of compulsory standards for pool skimmers, a number of accidents occurred, particularly involving young children who had become partly disembowelled by the suction from filter pumps. Examination of other products on the list of dangerous goods also shows similar potential health costs arising from exposure to lead paint, inaccurate doses of medicine, injury from projectiles and poisoning.

It is difficult to place a value on the costs of injuries or deaths that might arise if dangerous products were permitted to remain in the market place. While insurance markets and courts regularly do so, some might argue against the appropriateness of placing a dollar value of such things as the loss of life. Notwithstanding these concerns, there have been attempts to estimate the potential costs. We discuss these here to provide an indication of the potential benefits arising from the restrictions on dangerous goods.

In relation to pool filters and skimmers, the New South Wales Department of Fair Trading (DFT), in its Regulatory Impact Statement for proposed product safety standards, identifies a range of costs arising from accidents involving unprotected filters. These include the cost of hospitalisation, loss of income and pain and suffering. DFT estimate that each case of disembowelment generates a total cost of nearly $40 000. They further estimate that if a child were to die from their injuries, costs would amount to $2.4 million — a figure that does not reflect the distress to families from their loss and so likely to significantly understate the full costs of such an incident. These are clearly significant costs that the dangerous goods provisions seek to avoid.

The review needs to consider the *incremental* benefits from regulating against dangerous goods — that is, the extent to which regulation is likely to reduce the cost of injury and death. This requires a view on what would happen in the absence of regulation. This, in part, depends on the reasons why goods have been banned.

As noted above one reason for banning is that goods themselves are inherently dangerous. In this situation, in the absence of regulation, it would be expected that once it became known that products were dangerous:

- suppliers, facing the prospect of litigation, would remove such products from sale; and
- consumers would avoid these products.

This suggests that in the absence of regulation, the incidence of problems is likely to be low as consumers and suppliers react to information about the safety of products. Self interest helps reduce the potential harm.

However, while the incidence of problems may be low, they are not guaranteed to be zero — there may be consumers who are unaware of the problems with a product and there may be suppliers who are either unaware of the problems or unwilling to remove their product from sale. With a single incident potentially creating significant costs to consumers and/or the wider community, the incremental benefits of a ban, which prevents these two groups from transacting, are potentially large.

In the other case, where goods may be restricted because of the risk of inappropriate use, the costs of accidents are likely to be borne by someone other than the purchaser. This happens when third parties are injured through inappropriate use. The same self interest effect may not work to reduce accidents as in the previous case. This is the problem of market failure caused by external costs (externalities). The incremental impact of regulation on accidents is likely to be higher in these situations. The incremental benefits would be also higher.

Costs

Aside from the cost to government of administering the regulation, costs are potentially created by regulation through:

- restrictions in consumer choice if goods are banned or restricted in supply; or
- the reduction in value of any stock held by suppliers that can no longer be sold in the Territory.

In situations where the products themselves are faulty or dangerous, the incremental costs of regulation are likely to be low. This is because:

- the impact on consumer choice is likely to be low since consumers would have avoided such products anyway had they been fully informed; and
- suppliers would have had to bear the costs of stocks that they could not, or were unwilling to sell anyway.

In the other situation where restrictions may apply, the incremental costs may be higher. Since problems arise from inappropriate use of dangerous goods, legitimate/careful users of such products would be worse off following the ban. Their lost consumer benefits will be a cost of regulation.

The bans that have been put in place have tended to be product specific and on products that have close substitutes. For example, there is a wide range of alcoholic beverages or less powerful projectile firing toys available. In these situations, the cost of restricting consumer choice is likely to be low since consumers are likely to be able to find substitute products that can satisfy their demands.

Suppliers would incur costs since they would be unable to sell their stocks to legitimate users. These costs may reduced if these supplies are able to:

- return stocks to manufacturers, wholesalers, etc.;
- sell their supplies in other Australian or overseas jurisdictions; or
- modify products so they are safe.

Restrictions, rather than a ban, on the supply of dangerous products may help reduce the cost impost on suppliers. The sale of slingshots being restricted to those over the age of 18 years is one example where this has occurred. The application of powers to specific products, narrowly focuses the impact of regulation and also helps reduce the cost of regulation.

Assessment

The review team recognises that there are costs associated with restrictions on the supply of dangerous goods. However, the potential benefits that are delivered through the protection of public health and safety are significant. There is a clear net benefit from regulating the supply of dangerous goods.

Alternatives to current restrictions on supply of dangerous goods

As discussed above, a 'no regulation' approach is unlikely to meet the government's objectives for regulation. The risk to public health and safety would remain under this approach.

In terms of regulatory options, aside from bans on dangerous goods, Part 4 provides a range of alternative remedies to dangerous goods:

- restrictions on the supply;
- minimum product safety standards; and
- product information requirements.

The dangerous product provisions of Part 4 do not oblige the Minister to ban or restrict the supply of dangerous goods. This leaves open the less regulatory option of encouraging suppliers to voluntarily recall their products. This approach may allow suppliers to mitigate the cost of any adverse publicity that might follow a mandatory product recall or formal product ban.

The wide range of powers available to the Minister in dealing with dangerous products cover the spectrum of alternatives that might be employed to deal with dangerous goods. It seems there is much scope within existing regulation for achieving public health and safety at minimum cost to consumers and suppliers.

Conclusion

There are clear net benefits to be gained from regulating the supply of dangerous goods. The review team believes that the range of powers available in Part 4 of CAFTA provides adequate scope for the objective of protecting public health and safety to be achieved at minimum cost to the community.

The review team recommends that the powers relating to restrictions on the supply of dangerous good be retained.

Product information requirements

This section of the Act gives the power to make regulations that prescribe product information standards for products specified in regulations. Products that do not comply with these requirements may not be sold in the Northern Territory.

Currently only certain domestic electrical appliances are subject to minimum product information requirements under this part of CAFTA. Under the Consumer Affairs (Product Information) Regulations the following domestic appliances are required to display information relating to the energy consumption and energy efficiency of those goods:

- refrigerators;
- refrigerator-freezers;
- freezers;
- refrigerative air conditioners;
- dishwashers;
- clothes dryers; and
- washing machines.

This requirement is considered to have been complied with if the goods in question are labelled in accordance with the provisions of similar laws in other states including the State Energy Commission (Energy Efficiency Labelling) Regulation 1987 made under the *State Electricity Commission Act 1958* in Victoria or the Electrical Products Regulation 1990 made under the *Electrical Products Act 1988* in South Australia.

The regulations do not prohibit the sale of low efficiency appliances.

Energy labelling was first introduced into Australian legislation in New South Wales and Victoria in 1986-87. Since then, a national approach has been coordinated through the Australian and New Zealand Minerals and Energy Council with a mandatory national uniform scheme being introduced this year. Mandatory labelling legislation has been, or will this year be, introduced in the two remaining jurisdictions (Tasmania and ACT) that did not previously have such legislation. A re-designed energy label is currently being phased in as part of this new uniform scheme.

The mandatory labelling requirements are a component of the Commonwealth government's National Greenhouse Strategy which sets out measures necessary to satisfy Australia's commitments under the Kyoto Protocol to the United Nations Framework Convention on Climate Change.

The labelling requirements potentially restrict competition in the market for appliances through their effect on costs. In particular, if the cost of testing appliances represents a significant cost for smaller firms, it may limit their ability to compete with larger firms who may be able to spread these costs over larger production runs. They can also be seen to have a pro-competitive effect by improving information available to consumers.

The objectives of labelling requirements

The objectives for the energy labelling requirements when they were first discussed in the early 1980s were:

- to enable consumers to make an informed choice between energy consuming products;
- to provide an incentive for manufacturers in the medium term to design and market appliances with improved energy performance, and consequently tailored to consumers' requirements; and
- to promote energy conservation on a national scale and limit growth in energy demand (NECP 1983).

The 'life cycle' cost of purchasing an electrical appliance is not only the purchase price but also the ongoing running costs, of which energy costs are a significant component. Consumers are not likely to be in as good a position as the manufacturer to judge the energy efficiency, and therefore the total cost, of a particular appliance. The information requirements can be seen as addressing this information imbalance and allowing better informed decisions by consumers.

Net benefits of labelling requirements

The Australian Greenhouse Office (AGO) on behalf of all Australian states and territories commissioned the production of a regulatory impact statement (RIS) for the new mandatory national energy labelling requirements (GWA 1999). The review team understands that this RIS has been signed off on by the Commonwealth Office of Regulation Review and is being used by other jurisdictions to satisfy NCP requirements with respect to mandatory labelling legislation.

The RIS identified a number of costs that would be generated by mandatory labelling scheme:

- costs of administering the approval/registration scheme which requires a manufacturer or importer to register each model and corresponding label;
- cost of energy testing models in accordance with the appropriate published standard;
- cost of printing and fixing the detachable labels;
- costs to government arising from:
  - administration of the overall program (excluding costs of registration system);
  - verification and auditing of displayed labelling;
  - advertising and other promotion of the labelling program;
  - other expenses such as ongoing development, market research etc; and
- higher initial appliance purchase costs generated as consumers substitute toward more efficient appliances.

Not all of these costs are necessarily relevant to the Northern Territory. For example, since there are no appliance manufacturers in the Northern Territory, there is currently no arrangement for approving/registering labels. Only four states have established such arrangements. To the extent that these costs are reflected in the prices of appliances then Northern Territory consumers will bear these costs. Regulation 5 ensures that labels registered in other states are recognised in the Northern Territory.

- On the benefit side, the RIS identified two sources of benefit:
- improved energy efficiency of appliances leading to lower energy consumption and energy costs; and
- lower greenhouse gas emissions as a result of reduced energy consumption.

Lower greenhouse gas emissions are included as a benefit additional to the lower energy consumption since the external costs of greenhouse emissions are typically not reflected in the cost of electricity. The NCP protocol requires environmental cost and benefits to be taken into account in the net benefit assessment.

Table 4.1 presents the RIS's estimates of the net benefits for Australia as a whole of the mandatory labelling scheme. At a discount rate of 8 per cent, the net benefits are estimated to be $339 million with a benefit/cost ratio of 1.7. These results indicate that the mandatory labelling requirements deliver net benefits to the community.

4.1 **Costs and benefits of mandatory and voluntary labelling compared with no regulation (NPV $ m)**

	Mandatory labelling			*Voluntary labelling*		
	Discount rate 0%	*Discount rate 4%*	*Discount rate 8%*	*Discount rate 0%*	*Discount rate 4%*	*Discount rate 8%*
	NPV ($m)	NPV ($m)	NPV ($m)	NPV ($m)	NPV ($m)	NPV ($m)
Appliance cost impact	1097	688	449	258	163	108
Program cost impact	56	39	29	28	20	14
Total cost impact	**1153**	**727**	**479**	**286**	**183**	**122**
Energy cost impact	-2945	-1500	-818	-670	-352	-195
Total benefit	**2945**	**1500**	**818**	**670**	**352**	**195**
Benefit/cost ratio	**2.6**	**2.1**	**1.7**	**2.3**	**1.9**	**1.6**

Source: GWA (1999).

The RIS also estimated the net benefits for each state and territory. The RIS does not report the dollar value of benefits but reports a benefit cost ratio for the Northern Territory of 3.6. This is higher than the national average, reflecting higher energy use of appliances such as refrigerators and air conditioners in the Territory compared with cooler states such as Victoria.

With respect to the effect on competition, the RIS observed that 'the introduction of the existing mandatory labelling program had no impact on the number of suppliers or models on the Australian market' and that 'as proposed legislation would not extend the scope of mandatory labelling it is expected to have no significant impact on the number of suppliers or models' (GWA 1999, p. 55).

Alternatives to labelling requirements

The RIS also modelled the effect of a voluntary approach. The estimated benefits of such an approach are also presented in table 4.1. These indicate that, while the voluntary approach delivers positive net benefits to the community, the benefits of the mandatory approach are greater.

The lower benefits of the voluntary approach would reflect that, in the absence of compulsion, a reduced number of firms would label their appliances. This in turn would lower the up-take of more energy efficient appliances.

In view of the findings of the RIS that mandatory labelling requirements deliver positive net benefits to the community, the review team recommends that they be retained.

5 *Part 7 Door-to-Door Trading*

PART 7 OF CAFTA PROVIDES FOR THE REGULATION of the activities of door-to-door salespersons or dealers. The activities of telemarketers or telephone-based sales are also covered under the provisions of Part 7. The Act places certain conduct requirements on dealers and provides for the right of a consumer to rescind a contract under specific conditions.

The requirements of Part 7 mean that door-to-door dealers:

- are not allowed to call on a person, except by prior appointment:
  - at any time on a Sunday or a public holiday;
  - on a Saturday, before 9 am or after 5 p.m.; or
  - on any other day before 9 am or after 8 p.m.;
- must indicate the purposes of their visit;
- must leave the premises when required to do so; and
- must not harass or coerce the consumer.

Part 7 also regulates the content of door-to-door sales contracts. No contract is allowed to contain provisions that indicate that the contract is only enforceable in jurisdictions outside of the Northern Territory. Contracts that exceed $50 in value or whose value are not ascertainable at the time of making, excluding those for insurance or solely for credit, are classified as 'prescribed contracts'.

Prescribed contracts are required to:

- identify the full amount payable by the consumer or, if this is not ascertainable, identify the manner in which it will be calculated;
- include full details of any work to be carried out under the contract;
- provide for, and clearly identify that there is a 10 day cooling off period during which the customer may rescind the contract;
- have printed or typewritten contractual terms;
- set out the name and contact details of the dealer if the dealer is not the supplier;

- contain legible printing, typing or hand writing; and
- notify consumers about their rights in rescinding the contract and detail the form that may be used by the customer to rescind the contract.

Customers have the right to rescind a prescribed contract during the 10 day cooling off period. The customer may rescind all contracts within 6 months of the date of the contract if the dealer or the contract fails to comply with any provisions of Part 7.

Notice of rescission of contract must be written and in the form described in the *Consumer Affairs and Fair Trading (Door-to-Door) Regulation*.

The legislation in the Northern Territory is based upon model legislation that was developed in South Australia and Tasmania in 1985. All states and territories with the exception of New South Wales and Victoria have now adopted this legislation. Telephone-based sales are covered in all jurisdictions that have followed the uniform legislation. Victorian legislation provides for cooling off periods for 'contact' sales but does allow for voluntary cooling off periods for non-contact sales (telephone, internet, mail order etc). Neither the Victorian nor New South Wales legislation regulates the hours of calling. In New South Wales, coverage of legislation is restricted to purchases made on credit terms.

Door-to-door trading activity in the Northern Territory

The provisions of CAFTA relating to door to door trading are not limited to any particular sector and span all industries that participate in door to door trading activities. Such activities include:

- visits to consumers' homes (that were not initiated by the consumer);
- approaches in the street; and
- telemarketing activities.

The Act also covers appointments for a representative to call following contact that was not initiated by the consumer.

A wide range of goods and services are sold door-to-door (either via physically visiting a consumer or via telephone sales). These include encyclopedia, swimming pools, vacuum cleaners, painting and roof restoration services, home security, kitchen renovations, cable television, telecommunications and internet services, financial services and real estate. Telemarketing firms are often based outside of the Northern Territory.

Consumer Affairs reports that there has been increased door to door trading activity in the Territory. Nationally, telemarketing activity has been reported as expanding at 25 per cent per year with call centre activity (which encompasses a much wider sphere of activity than telemarketing) accounting for around $15 billion in revenue (Tasman Asia Pacific 2000).

Objectives for regulation

The second reading speech for CAFTA offers little advice on the objectives of Part 7.

In line with objectives of the wider Act, consumer protection is the main objective of Part 7, but this is a broad goal. Specific restrictions seek to protect consumers from different sorts of behaviour by traders. For example, consumer education brochures produced by the Department suggest that the 10 day cooling off period is aimed at protecting consumers from hard sell and high pressure sales tactics. By allowing the cooling off period, consumers have an opportunity to review their purchase decision away from any pressure created at the time of sale.

Door-to-door transactions differ from other sales transactions where the customer visits the vendor's place of business and that also involve high pressure sales tactics. In these situations, it is likely that customers have a definite interest in purchasing a particular product. In the case of door-to-door transactions, contact is initiated by the vendor and can lead to situations where consumers are pressured into purchasing goods or services which they do not want or need. Requirements such as the cooling off period seek to protect consumers in these situations.

Another reason for a cooling off period might be that consumers cannot easily identify the credentials of a particular trader. There have been a number of incidents of door to door trading scams involving itinerant trades people where those responsible have undertaken shoddy work and then left the Territory. A cooling off period may allow consumers time to verify the credentials of a trader.

Unlike other distribution channels, where the consumer seeks out potential vendors at their place of business, door to door trading involves vendors visiting many households to identify consumers. In the process, the trader imposes costs on other households that have no interest in purchasing products but are disturbed by the visiting trader. Restricting trading hours is one means by which governments limit these 'external' costs generated by door to door trading activity.

Public safety is also likely to be a motivation for restrictions on calling after 8 o'clock at night. The restrictions remove possible reasons that persons with ill intent might use in order to get householders to open doors late at night.

In summary, the objectives of regulating door to door trading activities are:

- to protect consumers from hard sell and high pressure sales tactics during uninitiated contact from salespersons;
- to protect consumers from fraudulent or incompetent traders; and
- to protect public amenity and safety by restricting the hours that traders may call upon householders.

Where do the restrictions to competition lie?

Part 7 of CAFTA potentially restricts competition in three ways:

- restricted trading hours — door-to-door traders are restricted from trading at times when other types of traders/distribution channels are open;
- 10 day cooling off period — consumers have to wait at least 10 days for their products in contrast to other types of traders who may be able to offer immediate delivery; and
- mandated requirements with respect to contracts that could represent a cost burden for traders affecting their competitiveness.

Costs and benefits

Benefits

Cooling off period

The benefits of the cooling off period are generated by avoiding situations where consumers end up purchasing a good or service that they do not want or cannot afford. This might occur if the salesperson employs high pressure sales techniques or if the consumer does not fully understand the nature of the product or the terms of the contract they are signing. The cooling off period allows people to reconsider their purchase away from the pressure of the sale.

It is reasonable to argue that since the development of the model uniform legislation in the mid-eighties, consumers are more sophisticated and are less sensitive to high pressure sales tactics (DFT 2000b). However, the benefits of the cooling off period probably lie in protecting those sections of the Northern Territory community that may be particularly vulnerable to high pressure sales techniques due to inexperience, age, cultural background or a poor understanding of English. The review team was told of several examples of incidents involving these groups.

The cooling off period also provides the opportunity to verify the credentials of traders that approach consumers. This is particularly important in regard to itinerant trades people that often operate in the Northern Territory. There have been a number of cases in the Territory where itinerant painters have performed shoddy work using inferior products that have washed off in rain. Older people who may not be physically able to inspect work (for example, on a roof) are particularly vulnerable to these kind of operators.

The protection offered by the cooling off period relies heavily on consumer awareness of both their right to rescind the contract and also the restriction that suppliers may not supply goods or services or take money during the cooling off period. The cooling off period offers little protection to the consumer who engages an itinerant trades person on the spot and pays cash for services rendered.

The cooling off period may also increase the confidence of consumers to deal with door to door traders. By taking some of the risk out of signing a contract that they might not fully understand, the cooling off period might be increasing the number of door-to-door transactions that are made. The extent to which this is occurring is unknown.

The cooling off period is also likely to lead to lower costs in terms of reducing costs of contract disputes (eg. legal costs) between consumers and traders.

Restrictions on hours

It has not been possible to place a dollar value of the benefits that residents place on not being disturbed by door to door traders on weekends and late in the evenings. However, submissions have indicated that consumers do place a value on not being disturbed. Ray Andersson, a member of the Northern Territory Consumer Affairs Council submitted:

> I have been approached by the public with a number of complaints relating to the timing of approaches...The community members have indicated a real

> value on their privacy from unsolicited calls or visits by a wide range of sales people, including Real Estate. Currently Real Estate agents have been approaching householders through unsolicited telephone calls on Sundays and early Saturdays in order to solicit placing their property on the market or having an appraisal with the emphasis on placing the house on the market with the soliciting Real Estate Agent.

Consumer Affairs have also indicated to the review team that they are of the view that there are a significant number of consumers do not wish disturbed at their residence by sales people either in person or by the telephone.

In terms of other jurisdictions, Queensland has just further limited the hours during which traders may call/visit on weekdays with no calls permitted after 6 pm. This tightening suggests that there is community support for restrictions on calling, in that state at least.

The public safety benefits from restricting the hours that traders may call in the evening are difficult to quantify. These will depend on:

- the incidence of criminal behaviour in the community;
- the extent to which residents are aware that persons calling after 8 pm are unlikely to be legitimate dealers; and
- the extent to which residents would open their doors anyway.

Requirements for contracts

The benefits of the requirements relating to contracts lie chiefly in ensuring that consumers are aware of their rights in respect to the contract that the are signing.

Costs

Any costs arising from regulation are likely to be largely borne by door to door traders in the form of:

- reduced sales through restrictions on trading opportunities (hours of trading and also the mandatory cooling off period); and
- higher administration costs arising from the prescribed requirements for contracts.

Consumers and government are also likely to bear some costs as a result of regulation.

Costs to industry

Door to door traders face restrictions on their trading hours that other retail distributors do not. For example, seven day trading is permitted in the Northern Territory, allowing shops with physical shopfronts to trade on Sundays when door to door traders cannot. Similarly, the internet is an emerging distribution channel through which firms are able to market their products. Sales can occur 24 hours a day, 7 days a week. While restrictions apply throughout the week (largely 'after hours'), it is likely that the restrictions on Sunday trading would be where the greatest impediment to competition lies.

Traders are not permitted to accept payment or deliver services during the cooling off period. Consumers therefore have to wait at least 10 days for their products potentially placing door to door traders at a disadvantage relative to other types of traders who are permitted to deliver goods immediately.

Traders may also bear additional costs through the effects of the cooling off period. For example, consumers may take advantage of the cooling off period to cancel contracts to take advantage of a better deal or if they simply change their mind. Traders are likely to bear additional costs of administration as a result. Such costs may represent a greater impost for smaller firms than for larger firms.

Not all these costs should be accounted as a cost of regulation. For example, where a consumer cancels a contract struck as a result of questionable sales techniques, it seems unreasonable to count cancellation costs borne by the company as a cost of regulation. Where the customer simply changes their mind, for example, if they find a lower price elsewhere, then these costs would be counted as legitimate costs of regulation. It has not been possible to establish what these costs are. In the latter case, it should be noted that there is a corresponding benefit to the consumer who has searched for and found a lower priced purchase.

The prescribed requirements for contracts and notices that must be given to consumers will have some influence on traders' costs. This might affect their ability to compete with other distributors or traders who may not face such requirements. However, the requirements for prescribed contracts do not appear to represent a significant impost on traders requiring not much more than what would be considered as good business practice (eg. a legible written contract with a clear indication of cost). Providing notices of the rights of the consumer to rescind contracts will add to the administration costs of traders but there are unlikely to represent a significant cost for traders.

Differences in requirements across jurisdictions will add to the cost of operators with national coverage. The uniform model regulation helps mitigate these costs. Differences across jurisdictions is more an issue that needs to be addressed by those states that have not adopted the uniform model than for the Northern Territory.

With respect to costs to industry from regulation, the review team notes that it received no submissions from industry participants that argued that regulation represented a significant cost to them.

In terms of the impact on the competitive position of a door-to-door trader, costs generated as a result of regulation will be offset by lower overheads and other costs that door-to-door traders face relative to other retail traders.

Cost to consumers

Consumers may also be harmed through restricted choice arising from trading hour restrictions. For example, some consumers may only be at home on a Sunday and therefore miss out on the opportunity to deal with a door to door sales person. Other consumers may wish to take immediate delivery of their purchases (especially in the case of services) but are prevented by the cooling off period.

The range of distribution channels that are open to consumers will offset any costs they might incur as a result of not being able to access the services of door to door traders. Seven day trading by traditional retail stores, online shopping on the internet and television shopping channels are examples of the increased choice available to consumers. In light of this, the review team does not consider that the reduced consumer choice is likely to represent a significant cost of regulation.

Cost to government

Consumer Affairs report that they receive very few complaints relating to door to door trading, approximately 10-12 per year on average. The cooling off period means that most disputes between consumers and traders can be resolved through the cancellation of the contract. This is likely to reduce the demands on Consumers Affairs to mediate in disputes arising from door to door trading. The addition to costs borne by Consumer Affairs as a result of regulation could be negative — that is, regulation generates a net benefit to government.

Assessment

The mandatory cooling off period offers a clear benefit in the protection that it offers to groups that might be vulnerable to high pressure or inappropriate sales tactics. On the other hand it does come at a cost to traders. The review has not been able to establish a precise estimate of what this cost may be but a number of factors suggest that it may not be so great that the cooling off period represents a net cost to the community. These factors include the following:

- the review received no submissions from industry arguing that the cooling off period imposed significant costs on them;
- an industry administered code of practice (see below) allows for a 7 business day cooling off period, suggesting that these costs are not too great; and
- it is not an uncommon practice for retailers to allow refunds if customers change their mind.

Ten days for a cooling off period is a relatively arbitrary measure. Longer or shorter periods may deliver greater or lower net benefits but there is no good way of judging this. The best argument for keeping a 10 day cooling off period is that the Northern Territory would remain in line with the other states that have adopted the uniform model. This is likely to mean lower costs for operators with national coverage.

The restriction on traders calling on households late in the evening offers benefits in terms of public safety and amenity. The cost to traders in terms of limitations on when they can trade is likely to be low. It seems clear cut that these restrictions generate a net benefit to the community.

Less clear cut is the value of restriction that prohibits trading on Sunday and public holidays. On the one hand, the restriction generates benefits since householders are not disturbed at their residents. The review received submissions indicating that this is important to the community.

On the other hand, the restriction prevents door to door traders from operating on Sundays when competing retailers can, and it also prevents consumers from accessing their services. The costs associated with this restriction will be greater:

- the less choice consumers have over alternative sources of supply for goods or services offered by door to door traders; and

- the greater the level of sector specific factors employed in door to door trading activity (that is, inputs that can only be used in door to door trading).

It is not clear that either of these conditions hold strongly in the case of door to door trading. On the balance of evidence, the review team concludes that the restriction on Sunday and public holiday trading offers a net public benefit.

Prescribed requirements for contracts do not appear to represent an onerous burden for traders — the requirements represent little more than what legitimate, honest trader would do as a matter of practice. Since much of the benefit of regulation relies on consumers exercising their rights (eg to rescind a contract within a cooling period), there is a clear benefit in making sure that consumers are aware of their rights. Requiring this as part of the contracting process is a direct way of ensuring this happens.

Alternative forms of regulation

A key requirement for an NCP review is to examine other ways of meeting the objectives of regulation in a lower cost, less restrictive way. The review has considered two alternatives to the current arrangements:

- no regulation — removal of current regulation; and
- self regulation by industry.

Removal of specific regulation

The complete removal of regulation would be one option. This would mean that there would be no specific regulation to achieve the objectives of regulation. Rather, the government would be relying on general consumer protection and other regulation to achieve its consumer protection objectives.

This other regulation might include the misleading and deceptive conduct provisions of Part 5 of CAFTA. These provisions also prohibit undue harassment and coercion. Part 6 provides for remedies aimed at compensating consumers and stopping these practices. The New South Wales Department of Fair Trading (DFT 2000b) identifies a number of problems with the use of existing fair trading legislation:

- actions require court issued injunctions and rectification orders which are highly interventionist and involve significant enforcement costs for the regulatory agency;
- there are problems relating to enforcing provisions related to undue harassment; and
- the fair trading provisions do not provide easy access to remedies on an individual basis.

It is questionable whether the objectives of regulation could be achieved under a no specific regulation approach.

Self regulation

Another model might be self regulation. Under this model, the government would rely on an industry body to regulate its members. The industry body would set its own standards for contracts, hours of activity and cooling off periods and would discipline its members for breaches of its rules.

Self regulation typically is more successful when there is a cohesive, uniform industry. Self regulation is unlikely to be successful in controlling rogue operators who do not conform to the industry body's standards.

The Australian Direct Marketing Association (ADMA) currently has a code of practice for direct marketing that its members must adhere to. A component of this code covers telemarketing practices. Box 5.1 describes ADMA and its code of practice.

ADMA and its code are not directly focused on traditional 'door-knocking' door to door traders. The review is not aware of a corresponding peak or representative body in the Northern Territory that could operate a similar code for this group of traders. This suggests that a self regulatory model might involve the current regulation staying in place for traders that physically visit households while telemarketing activities would be covered by the ADMA code.

The key differences that this approach has compared with existing regulation are (in relation to telemarketing):

- cooling off periods would be in place but different in structure to those for other door to door traders;
- no coverage for traders that are not members of ADMA; and
- calls on Sunday and Saturday evening would be permitted.

5.1 ADMA and its code of practice

ADMA is the representative body for organisations that market their products directly to consumers and business via telephone, direct-response television and radio, print media such as catalogues, magazines, newspapers and addressed mail, the internet and other new interactive media. ADMA has a membership of over 400 firms involved in information based marketing. Together, ADMA members account for over 80 per cent of the $9 billion annual direct marketing advertising expenditure in Australia.

ADMA has administered a self-regulatory code for over 20 years. Telemarketing provisions were introduced in the 1980s. In 1996, under the auspices of the Ministerial Council for Consumer Affairs, ADMA developed a Model Code of Practice for Direct Marketing. This code was developed in close consultation with government, consumer and industry groups.

The code was intended to address a number of consumer protection issues in relation to direct marketing. These include:

- information disclosure;
- cooling off periods; and
- the use and disclosure of personal information.

The specific requirements relating to telemarketing are:

- a 7 business day cooling off period (deemed from the date of receipt of goods by customer);
- calls permitted only between the hours on 8 am and 9 pm and not on the public holidays of Christmas Day, Good Friday and Easter Sunday.
- upon request, disclosure of information such as contact details, details of product, source where customer's details obtained; and
- other requirements relating to line disconnection times, calling frequency, calling conduct and identification information.

All members of ADMA must abide by the provisions of the code and ADMA has committed to seeking compliance from non-members who have breached the code.

Source: Tasman Asia Pacific 2000, ADMA 2000.

The ADMA code offers a 7 business day cooling off period from the day the consumer receives the goods. This is more generous than that under current regulation and allows traders to supply goods immediately. It does however mean that the onus is on consumers to return goods and also secure their refund from the supplier. It is possible that different cooling off period arrangements for different types of traders could lead to consumer confusion.

While ADMA members account for 80 per cent of the direct marketing industry, their coverage of the telemarketing segment is not known. Even at 80 per cent coverage, there would still be 20 per cent of the industry that is not covered. Just what risk that these non-members pose to consumer well-being is unknown. While ADMA has committed to seek compliance from non-members who breach its code, it has no legislative backing to force compliance.

Under the ADMA code, there is no restriction on calling on Sundays. A question is to what extent would the self-regulatory approach lead to more frequent calls on Sundays compared with the current system? Consumer Affairs reports that they are aware of telemarketers, typically from interstate, operating on Sundays so there is a degree of non-compliance with current regulation. It could be argued that the incremental impact of the current regulation is low. However, this ignores the public amenity benefits that the current regulation seeks to achieve and points to the need for greater enforcement of existing provisions. There is an issue of whether provisions are enforceable but Consumer Affairs reports that they have been successful in prosecuting such breaches.

Conclusion

The restrictions on door to door trading that are created by Part 7 of CAFTA generate a net benefit to the community. The question for the review is whether the objectives of regulation could be achieved in a less costly and less restrictive way.

The review considered a 'no specific regulation' option but concluded that this is unlikely to meet the objectives of regulation.

Self regulation could be an option for telemarketing activity since there is a well established code of practice in place covering major businesses in this area. The main benefit of this self regulation approach is that industry would be able to trade on Sundays and selected public holidays in the Northern Territory.

Weighed against this benefit are:

- the loss to public amenity that would arise through disturbances to households;
- the risk to consumer well-being from telemarketing firms that are not covered by the ADMA code; and
- costs associated with increased disparities across jurisdictions as a result of moving away from the model uniform regulation.

It is not clear to the review team that a self regulatory approach for telemarketing offers greater net benefits than the current regulation.

The review team considers that the provisions under Part 7, while restricting competition, offer a net benefit to the community that could not be achieved by other means. The review team recommends that the provisions be retained.

6 Part 8 Fair reporting

PART 8 GOVERNS THE RELATIONSHIPS between reporting agencies, traders and consumers. The provisions of this part of the Act were introduced to allow consumers to access the information about them held by reporting agencies. Reporting agencies are defined under Part 8 as 'a person who carries on the business of providing information relating to other persons'. The review team understands that the provisions were introduced following commencement of operations in the Territory, with the aim of safeguarding consumer rights of access to their files.

While the provisions of Part 8 apply equally to all reporting agencies, reporting firms may face higher costs as a result of the requirements. As such, the provisions are potentially anti-competitive since these higher costs might affect the ability of certain types of firms, for example, smaller firms, to compete.

The nature of the provisions and objectives

Part 8 provides for:

- certain limits on what may be included in a reporting agency report such as:
  - information that is not based on the best reasonably available evidence; or
  - unfavourable personal information based on unsubstantiated hearsay evidence;
  - information as to the race, colour, religion or political belief or affiliation of any person;
- a duty of disclosure of traders to notify consumers where a report of a reporting agency has been utilised and where the consumer has been denied a benefit or has been offered less favourable terms;
- a duty of disclosure of reporting agencies who, when requested, must disclose the information relating to the person; and

- rights of persons to have inaccurate or incomplete information investigated and corrected.

The provisions apply where:

- the reporting agency or trader provides a report to person carrying on business or letting premises in the Northern Territory; and
- the person to whom the report related is a resident of the Northern Territory.

The legislation, which was introduced in the 1980s, is largely based upon similar provisions in the South Australian *Fair Trading Act*. The provisions aim to guarantee the rights of individuals to access and, where necessary, have corrected information contained on files and also to safeguard the end use of information contained in those files.

Other jurisdictions have taken a variety of approaches to fair reporting provisions. The review team is not aware of similar legislation in New South Wales, Western Australia or Tasmania. These states rely primarily on the Commonwealth *Privacy Act* to regulate the rights of access to credit information held by reporting agencies. Queensland only regulates access to consumer credit information under its *Invasion of Privacy Act*, limiting coverage to consumers seeking credit to be used wholly or primarily for personal, family or household purposes. Victoria also regulates access to consumer credit information but defines consumer more widely than the Queensland Act and would appear to encompass commercial credit information. As noted above, South Australia has similar provisions as those in Part 8 with a definition that extends beyond just credit information.

Nature of impact of restrictions on competition

The requirements of Part 8 apply to all traders and reporting agencies on a non-discriminatory basis. These provisions do, however, potentially restrict competition through their impact on firm costs. Small firms, in particular, may be at a disadvantage if these costs are significant and disproportionate. The extent to which these costs are significant is discussed further in the next section.

Net benefits of regulation

Individuals are likely to be in a better position to know their credit history, or other personal information, than reporting agencies who must rely on a number of sources of information. There is scope for error, for example, arising from confusion of identity or errors in records kept by credit providers that provide information to the reporting agency. The costs of any errors are more likely to be borne by the individual, who may be refused credit or other benefits, than the reporting agency.

The review team was not able to obtain recent information on how many Northern Territory residents are requesting access to their files or how many of these requests lead to changes in their files. However, Bargon (1994) reports some older data that indicates there these access arrangements deliver a benefit to consumers. Bargon reports that the then Credit Reference Association of Australia (now called Credit Advantage) received 122 000 requests for access for files. This led to 11 000 inquiries or disputes over information. One thousand eight hundred disputed default reports from CRAA members were deleted as a result. Assuming one disputed report per consumer, this means that approximately 2 per cent of initial inquiries lead to a change in a consumer information file.

Reporting agencies, whose reputation depends upon providing reliable information, have an incentive to ensure that the information they provide is accurate. However, they face a trade-off between the benefits of accuracy and the costs of verifying information on files. Larger reporting agencies hold as many as 12 million information files — the costs of verifying every individual file is likely to be prohibitive for these firms.

The fair reporting provisions seek to avoid problems arising from incorrect information files by clarifying individuals rights of access to personal information kept on files and the rights to challenge the accuracy of such information. The primary beneficiaries are then the individuals who would otherwise have faced costs, perhaps through the refusal of credit, as a result of inaccurate information in their files.

On the cost side, the requirements relating to what may be contained in a report do not seem to amount to much more than what a competent reporting agency would do as a matter of course in terms of ensuring accuracy of information. Costs associated with verifying a query and correcting information should not be counted as a cost of regulation.

These costs may, however, be inflated if the legislated rights of access have increased the incidence of frivolous requests — for example, individuals attempting to have bad debts expunged from their records knowing that there is little basis for doing so. Such requests need to be investigated by reporting agency and add to their costs. The extent that such activity has occurred is unknown.

Reporting agencies do face costs associated with managing requests for information files. One large reporting agency has a separate division responsible for handling public requests for access. Given the large volume of requests that reporting agencies face, these costs can be quite significant. For example, Bargon (1994) estimated that ongoing compliance costs to industry of complying with the provisions of the Commonwealth *Privacy Act* (see below) amounted to around $4 million annually.

It is incremental costs and benefits that count

An important issue for the review is to determine the extent to which these abovementioned benefits and costs are *incremental*. That is, if the regulation in the Northern Territory were removed, to what extent would benefits and costs be reduced? This requires consideration of what would happen in the absence of regulation.

In the present context, the existence of the Commonwealth *Privacy Act 1988*, duplicates the functions of Part 8 of CAFTA in area of consumer credit information. Part IIIA of the *Privacy Act* contains extensive provisions relating to consumer credit information including the provision for the Federal Privacy Commissioner to develop a mandatory Credit Reporting Code of Conduct that governs the practices of credit reporting agencies and credit providers and also provides for dispute resolution processes and for powers of the Federal Privacy Commissioner to investigate complaints.

Table 6.1 compares the provisions of Part 8 with corresponding provisions of the *Privacy Act*. It is clear that in the case of consumer credit information, the provisions of Part 8 are largely duplicated, and in some case extended, by the *Privacy Act* and the associated Credit Reporting Code of Conduct. In terms of consumer credit, the provisions of Part 8 are unlikely to generate any significant additional benefits, or costs, over those generated by the Commonwealth *Privacy Act*.

Since the *Privacy Act* is primarily concerned with the security of personal rather than business information, it does not directly cover commercial credit information nor does it cover other types of information providers that are covered by Part 8 of the Act. The incremental benefits and costs of the provisions of Part 8 are therefore limited to these areas.

6.1 Part 8 of CAFTA and the *Privacy Act 1988*

Feature	*CAFTA*	*Privacy Act*
Coverage	Reporting agencies, traders	Credit reporting agencies, credit providers
	No limit of information covered, consumer and commercial credit information included.	Consumer credit information only
Restrictions on content of report	Information is accurate and fair based on the best evidence that is available	Information must be accurate, up-to-date, complete and not misleading
	Reports shall not include information relating to race, colour, or relying on political beliefs or affiliation of person	File must not contain details of political, social, religious beliefs criminal record medical history or physical handicaps race, ethnic origins or natural origins sexual preferences or practices lifestyle, character or reputation
Duty of disclosure — Traders/Credit providers	Trader must, following written application, inform person if report has been received and who provided report	A credit provider who has refused an individual's application for credit as a result of an unfavourable credit report must inform the individual: – that refusal was based wholly or partly on the credit report; – of the name and address of the credit reporting agency; and – of their rights to view their file.
Duty of disclosure — Reporting agencies	Reporting must provide, following written application: all information in file details of those who have received report in past 12 years copies of all reports	Access to file must be granted if – it relates to refusal of person's application for credit – otherwise related to management of individual's credit arrangement
	Access to be provided without charge.	Access must be provided within 10 working days of request
		Access to be provided without charge. Recipients of information from file must be recorded in file, along with details of information disclosed.
Correction of errors	A reporting agency must verify the accuracy of information following dispute and respond within 30 days.	Where an amendment has been made, credit reporting agency must provide a copy of amended file to individual.
		They must also forward copy to persons who have received the file in last 3 months as nominated by the individual

Source: CAFTA, Privacy Act 1988, Credit reporting Code of Conduct.

It is also questionable whether any costs or benefits of access rights to commercial credit information could also be attributed to the provisions of Part 8. As noted above, only 3 jurisdictions, Northern Territory, South Australia and Victoria have regulation that covers access to commercial credit. One major credit reporting agency told the review that nationally, they voluntarily provide the same access arrangements for commercial credit as for consumer credit. This arises in part because of difficulties in distinguishing between consumer and commercial information. For major credit reporting agencies at least, the removal of legislation in the Territory is unlikely to make much difference to the way they handle commercial credit requests. That is, the incremental benefit and cost of regulation in the Northern Territory in terms of commercial credit is likely to be small. Of course, this may not be the case for smaller credit reporting agencies who do not have similar policies as larger operators.

Conclusion

The review has found that the requirements of the Commonwealth *Privacy Act* combined with voluntary action by major industry participants go a long way to meeting the objectives of the fair reporting provisions of Part 8 of CAFTA. In terms of consumer credit information, the incremental benefits of the Northern Territory legislation are small. That said, the incremental cost generated by the legislation is also likely to be small – the systems for providing public access to data are largely driven by the requirements of the Commonwealth's *Privacy Act*. This is also likely to be the case for access to commercial information held by major credit reporting agencies.

The additional benefits and costs generated by Part 8 provisions are limited to providing rights of access to files held by:

- non-credit reporting agencies; and
- commercial credit related files held by smaller reporting firms that would not voluntarily provide access to such files in the absence of regulation.

Under the NCP protocol, the onus is on the proponents of regulation to demonstrate that the restriction delivers net benefits to the community. This has not been done and under the protocol, the review team should recommend that the provisions of Part 8 be removed and the objectives of regulation be achieved through reliance on the Commonwealth's *Privacy Act* and voluntary action by industry participants.

However, the review team is aware of an emerging issue related to access to residential tenant databases. These databases are used by the real estate industry to screen tenants. The objective of the database is to identify 'problem tenants' and providing details of the agent that listed them on the database. A number of issues have been raised in respect of the databases including:

- incorrect information on databases;
- refusal of access to information of database for tenants;

- no mechanisms for verifying identities of those listed; and
- no guidelines on reason why tenants may be listed.

The Ministerial Council on Consumer Affairs (MCCA) is currently considering options to prevent consumer detriment caused by inappropriate use of these databases. The review team understands that the matter has been referred to the Standing Committee on Consumer Affairs (SCOCA) which is awaiting a report from the New South Wales Council of Social Services on this issue.

The issues relating to access to these databases are of national in scope and one clear option would be for all jurisdictions to introduce and enforce fair reporting provisions such as those under Part 8 of CAFTA. The review team is therefore reluctant to recommend the removal of the fair reporting provisions of CAFTA until this issue is resolved by MCCA.

The incremental net benefits of Part 8 of CAFTA have not been demonstrated and, under the NCP protocol, Part 8 of CAFTA should be rescinded. However, the review team recommends that any action be deferred until the report of the New South Wales Council of Social Services on residential tenant databases is received by SCOCA and any implications for the fair reporting provisions of Part 8 are determined.

7 Part 9 Trading Stamps

TRADITIONALLY, TRADING STAMPS have been offered in the form of a stamp, coupon, voucher or other physical instrument exchangeable for various prizes, gifts or other goods or services. A modern form of the trading stamp is the 'flybuys' or other points-based promotional schemes that allow consumers to earn credits through their spending.

Part 9 of CAFTA contains provisions for the prohibition of specified trading stamps. Part 9 makes its an offence to:

- provide or offer to provide a prohibited trading stamp in connection with the sale of goods;
- redeem a prohibited trading stamp; and
- publish or cause to be publish a prohibited trading stamp.

These offences are punishable by a $5000 penalty.

The Act defines a prohibited trading stamp as:

- a third party trading stamp which is provided, or intended to be provided, in connection with a third-party trading stamp scheme that does not comply with the prescribed conditions; or
- a trading stamp which is provided or intended to be provided in connection with the sale of, or for the purpose of promoting the sale of tobacco, cigarettes, cigars or other tobacco products.

There are currently no regulations prescribing conditions with which third party trading stamp schemes must comply so there are currently no restrictions on third party trading stamp schemes in the Northern Territory. Only tobacco-related trading stamps are prohibited.

Third party trading stamps

Third party trading stamps are defined under the Act as:

> a trading stamp which is redeemable by a person who is not the manufacturer or a vendor of the goods or services to which the trading stamp relates.

The provisions relating to third party trading stamps were introduced following problems faced by consumers and retailers in redeeming coupons offered by a manufacturer in conjunction with a newspaper. Problems arose because retailers were not party to the agreement and there were apparently no arrangements in place for reimbursing retailers who consequently refused to honour the coupons. This is likely to have created costs for both consumers, who may have purchased newspapers in order to get the coupon, and also retailers who had to deal with customer queries and complaints.

Objectives of provisions

The original provisions of Part 9 imposed a complete prohibition on third party trading stamps with objective of reducing consumer detriment arising from such situations as described above. However, following concerns that new points-based schemes such as the GM card or fly-buys were unintentionally covered by the ban, the Act was amended in 1996 to its present form. The intention of the amendment, as described in the second reading speech, was to provide for the making of regulations that specify the conditions with which third party trading stamps schemes must comply:

> This [amendment] allows for the making of regulations that will clarify the legal position under the act of newer schemes that inadvertently could be caught up in the existing provisions. Thus, for example, it may be that schemes such as GM card and Fly Buys may breach section 124. It is intended to back this amendment with regulations that contain the prescribed conditions with which such schemes must comply in the interests of consumer protection. (Attorney General's second reading speech, Seventh Assembly, First Session, 28 November 1995)

There are no regulations that specify the prescribed conditions so there are currently no restrictions on third party trading stamps. This is in contrast to the period prior to the 1996 amendment when there was a complete prohibition on third party trading stamps. In light of this, the objectives for the provisions in Part 9 relating to third party trading stamps are now somewhat unclear.

Impact on competition

The absence of any regulations that prescribe conditions that third party trading stamps schemes must comply with means that the provisions in Part 9 impose no direct cost on businesses nor have a direct effect on competition. There is, therefore, no restriction on competition that needs to be reviewed here.

There is, however, a risk that the presence of unspecified powers to regulate third party trading stamps generates uncertainty for firms that may wish to use this avenue to promote their products. Consumer Affairs reports that they have received a number of inquiries seeking clarification of the current regulatory position from legal representatives of companies wishing to introduce new credit card options into the market. It would be preferable for regulations to specify the conditions with which third party trading stamps should comply to remove any uncertainty that may exist. The review team observes that any new regulations would need to be subject to net public benefits test under NCP.

It may be the case that any potential problems involving trading stamps could be handled through other existing provisions of CAFTA. For example, it seems possible that the false and misleading representations provisions of Part 5 of CAFTA could apply where a retailer refuses to honour coupons/stamps that were issued by other parties. Where no prescribed conditions are thought to be necessary, there is a question over the need for the provisions relating to third party trading stamps in Part 9 at all.

The review team recommends that the Department prescribe the conditions for third party trading stamp schemes that are necessary for consumer protection. If no conditions are deemed necessary, then the provision relating to third party trading stamps should be removed.

Tobacco-related trading stamps

The prohibition of tobacco related trading stamps places a limitation on tobacco companies in terms of how they might market their products and is anti-competitive.

Objective of restrictions

The ban on tobacco related products has a public health objective in mind. The ban is consistent with the National Tobacco Strategy guiding health policies of all state and territory governments in Australia. In particular, the Strategy aims to reduce the promotion of tobacco related products through such things as limits on advertising (enacted through the *Tobacco Advertising Prohibition Act 1992*) and limits on tobacco value added promotions and products.

The Commonwealth *Tobacco Advertising Prohibition Act 1992* is the primary vehicle through which the promotion of tobacco products is controlled in the Northern Territory. Unlike New South Wales, Victoria, Western Australia and the ACT, the Northern Territory does not have additional state/territory legislation regulating tobacco advertising. A Northern Territory Tobacco Strategy is currently being developed. The Northern Territory government has a tobacco control budget of approximately $0.5 million a year.

Net benefits of restrictions

The cost of tobacco use in the community is substantial. The Commonwealth Department of Health and Aged Care (2000) reports that the annual cost to the community of tobacco use is $12.7 billion, comprising:

- $6.5 billion of tangible costs, including those associated with loss of workforce productivity, health care costs and resources used in addictive tobacco consumption; and
- 6.2 billion of intangible costs, including mortality. It should be noted that this estimate does not include costs associated with passive smoking, absenteeism, property costs of accidental fires, and ambulance services.

Reducing the promotion of tobacco products is seen as a key strategy for reducing tobacco consumption and generating benefits to the community. The National Tobacco Strategy notes:

> Research has confirmed that young people are more sensitive to tobacco advertising and promotion than are adults and suggests that children's exposure and receptivity to tobacco advertising and promotion is an important factor in determining future smoking behaviour. Promotion of tobacco products also undermines public health education programs run by government and non-government organisations (p. 26).

While it is the case that, in the past, trading stamps have probably not been used heavily as a promotional tool by the tobacco industry, as controls on traditional promotional methods tighten, it seems likely that tobacco companies will seek out other means of promoting their products. Trading stamps could be one avenue. The benefits of the ban on tobacco-related trading stamps can therefore be seen as being generated through the support of other anti-tobacco promotion measures in place under the National Tobacco Strategy and the Northern Territory Tobacco Strategy, once it is finalised.

The net benefits of the ban on tobacco-related trading stamps are inextricably linked to the net benefits generated by the suite of measures under the National Tobacco Strategy. As such, the net benefits on the ban on tobacco-related trading stamps is something that can only be sensibly estimated within the context of the wider measures of the National Tobacco Strategy – something that is outside the scope of this review.

If the tobacco-control measures in place under the National Tobacco Strategy generate net benefits to the community, then it is likely that the ban on tobacco-related trading stamps does also. However, in the absence of the measures in place under the National Tobacco Strategy and other anti-tobacco measures introduced by the Commonwealth and Northern Territory governments, a ban on tobacco-related trading stamps has questionable value to the community.

In line with the Northern Territory government's other tobacco control policies, the review team recommends that the ban on trading stamps related to the promotion of tobacco products remain. Should these other tobacco control policies be found to deliver a net cost to the community, either through the NCP review process or other review process, then the ban on tobacco-related trading stamps should be lifted.

8 Part 10 Motor Vehicle Dealers

Requirements of the Act

Motor vehicle dealers are licensed under Part 10 of CAFTA. Part 10 also specifies certain conduct requirements for licensed dealers including the provision of minimum warranties for second hand vehicles and the approval of dealer's managers.

Licensing

Dealers must apply to Consumer Affairs for a licence. Unlicensed dealing or dealing from unlicensed premises attracts a fine of $20 000 and possible forfeiture of vehicles and proceeds from dealing. Copies of applications are sent to the Commissioner of Police, and notification of the receipt of the application is published in local and Territory-wide papers. The Commissioner and the general public are entitled to object in writing to an application. An application can be refused if the applicant:

- is under 18 years of age;
- has been disqualified from holding a licence;
- is an undischarged bankrupt;
- does not have sufficient material and financial resource to carry on business as a dealer;
- is not likely to carry on business honestly and fairly;
- is in any other way not a fit and proper person; or
- is intending to carry on business in partnership with someone who would not be granted a licence in their own right.

The fit and proper person test can consider, among other things, whether the applicant has been found guilty of, or served any part of a term of imprisonment for an offence involving fraud, dishonesty or physical violence in the past 10 years or whether the applicant is bound in relation to such an offence by a recognisance or is subject to a charge relating to such an offence. The fit and proper person test can also take into account any past offences against CAFTA.

The Act or regulations do not specify what constitutes 'sufficient financial resources to conduct business' other than as a capacity to 'obtain a substantial equity either as owner or lessee in the premises to be used by the applicant for the purposes of carrying on business' and to make 'proper financial arrangements to carry on business as a dealer'. Applicants should also have the capacity to develop premises to standards required by the Act and regulations.

Applicants must submit a business plan and financial records with their application. These are reviewed by an officer of the Department with a background in accounting. The review is necessarily subjective as there are no defined criteria in the regulation to judge the financial soundness of applicants.

The adequacy of 'material resources' is based on the appropriateness of an applicant's premises. Specific requirements are that the premises:

- include facilities that provide privacy for the transaction of business;
- have provision for the storage of records and documents;
- have an adequate area for motor vehicle display; and
- comply with relevant town/planning or zoning requirements.

The Act or regulations do not define what constitutes an 'adequate' area for displaying vehicles leaving the judgement to the discretion of the licensing authority.

Licences are granted for an indefinite period and are valid unless they are cancelled or otherwise revoked, the dealer dies or, in the case of a body corporate, the dealer is dissolved. An annual renewal fee is payable.

The Commissioner may revoke, suspend or place conditions on a licence if:

- the licence was obtained by means of misrepresentation;
- the licence holder no longer satisfies the criteria for the initial grant of a licence; and
- where a licence is held by a body corporate, the licensee did not notify a change in director or management of the body corporate.

Conduct requirements

The Act also imposes a number of conduct requirements on dealers. Dealers are required to:

- lodge an annual return containing:
  - a statement of profit and loss and a statement of assets and liabilities (certified by a member of the Institute of Chartered Accountants or the Australian Society of Certified Practicing Accountants); and
  - a statement that identifies changes to a licence holder's circumstances that might affect their eligibility to hold a licence;
- display the licence in a conspicuous place at the principal place of business nominated on the licence (the licensed premises);
- maintain a dealings register that records the details of:
  - second hand vehicles that the dealer has purchased;
  - vehicles that the dealer is selling on consignment;
  - vehicles that the dealer has sold; and
  - vehicles that the dealer has demolished or permanently dismantled;
- use standard form contracts for the sale of second hand vehicles as detailed in the *Motor Vehicle Dealers Regulations*.; and
- use prescribed forms authorising sale on consignment and account to the consignor within 14 days after sale of the vehicle.

The Act also requires certain conduct with respect to sales on consignment (vehicles sold on behalf of other persons). This includes the use of a prescribed form for the sale of a vehicle on consignment.

A number of actions are also prohibited under Part 10. These include:

- altering a vehicle's odometer;
- selling vehicles without a vehicle identification number;
- selling vehicles that are registered interstate;
- dealing with persons under 18 years of age without that person's parent or guardian's approval; and
- submitting documents to customers for signing that have not been completely filled out.

Where a dealer breaches the Act, consumers have rights of redress. For example, where a dealer is found guilty of misrepresenting the year of manufacture or the model of a vehicle, the purchaser may apply to the Commissioner to order the dealer to refund the difference between the purchase price and the fair value at the time of sale (if this is less that the price paid).

Minimum warranties

Dealers are required to offer statutory warranties for certain types of vehicles that they sell. Dealers must repair certain defects on motor vehicles that occur within 5000 km or 3 months of sale (whichever occurs earlier). In the case of vehicles sold subject to an unexpired manufacturer's warranty, the manufacturer's warranty period applies.

Statutory warranties are not required on vehicles that are more than 10 years old (5 years in the case of motor cycles) and which have driven more that 160 000 km (30 000 in the case of motor cycles). Sales of commercial vehicles, vehicles sold to a trade owner, and vehicles sold at auction do not require a statutory warranty.

A 'defect' is not defined by the Act, although it excludes those arising from:

- accidental or malicious damage suffered after delivery of the vehicle;
- misuse of the vehicle, negligence of a driver or from use in motor racing after the purchaser took delivery of the vehicle; and
- superficial damage to the vehicle which would have been apparent on reasonable inspection of the vehicle prior to sale.

Defects in accessories not fitted at time of manufacture are also excluded.

Customers are able to waive their rights to a statutory warranty. To reduce the risk of coercion, the contract must be signed away from the dealer's premises and in the presence of a person authorised by the Commissioner or a member of the police force.

Approval of dealer's managers

A dealer's premises must be under the day to day control of either the dealer or an approved manager. Managers must be approved by the Commissioner. Approval is subject to the same test as for a person applying for a dealers licence except for the requirement for sufficient material and financial resources.

The market affected by regulation

A motor vehicle dealer is defined as a person who buys, sells offers for sale or exchanges motor vehicles as a business. The regulation does not cover:

- operators that demolish or dismantle vehicles for spare parts;
- financiers; or
- exempt traders — vehicle traders that do not deal with the public.

Vehicles sold at auction are not covered by the provision of Part 10 but come under the provisions of the *Auctioneers Act*. Private sales are also outside the scope of the Act as these are, by definition, not conducted as part of a business.

Section 184 applies a number of the provisions of Part 10 that apply to licensed dealers to car rental companies when they dispose of their vehicles. These provisions relate to dealing registers, contracts, odometers, vehicle identification and roadworthiness and warranties. Rental car companies do not have to be licensed. The objective of this provision is to ensure that dealers are not disadvantaged compared with car rental companies.

There are currently 110 licensed motor vehicle dealers in the Northern Territory. These range in size and scope from major new car dealerships to smaller independent dealers selling lower value cars. Other licensees sell vehicles in association with other activities — for example, service stations selling cars off their forecourts. The Motor Trade Association (MTA) estimates that approximately 70 per cent of dealers in the Territory are members of its association.

There are limited statistics on the economic value of the industry in the Northern Territory. The Australian Bureau of Statistics does not separately identify motor vehicle sales from other motor trades.

Stamp duty revenue collected by the Department of Transport and Works when a vehicle is registered can provide some broad of the dimensions of the market size in the Northern Territory. The Territory government levies stamp duty of 3 per cent on the purchase price of a vehicle. In 1998-99, the Department of Transport and Works collected approximately $12 million in stamp duty. This implies a total value of sales — through a licensed dealer, private sale or auction — of around $360 million dollars per year. This will tend to understate the value of sales due to the effect of exemptions from stamp duty.

The objectives for regulation

The purchase of a motor vehicle represents one of the more important financial decisions a consumer can make. A purchase of a motor vehicle is often described as the second largest financial outlay behind the purchase of a house. Governments around Australia and internationally have typically regulated motor vehicle dealers to protect consumer interests.

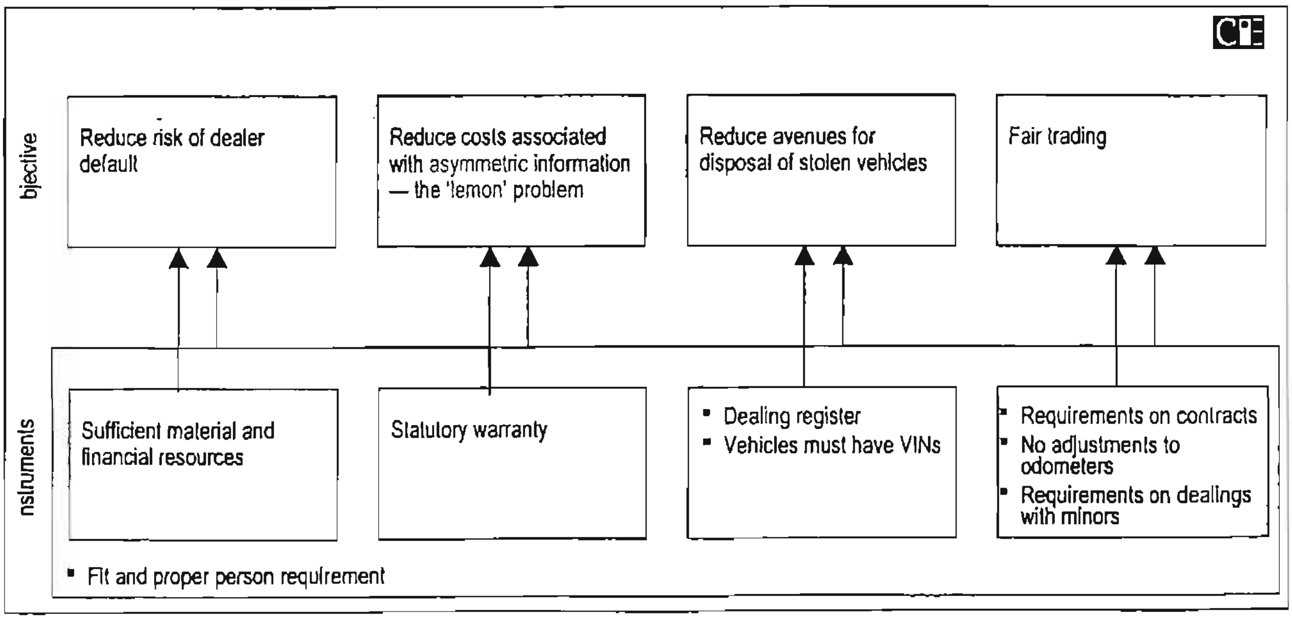
Chart 8.1 illustrates how the various requirements of Part 10 map to regulatory objectives.

Consumers face many risks when they purchase a vehicle. A common problem is the risk that they may purchase a 'lemon'. Since consumers infrequently purchase vehicles and may have limited mechanical expertise, they may not be in a position as good as dealers to judge the quality of a vehicle. This imbalance of information may place consumers at a disadvantage and at risk of exploitation. One objective of regulation, delivered through warranty provisions, is to protect consumers from such risks.

A further risk for consumers is that dealers may default, leaving them out of pocket or with no one to satisfy warranty obligations. Consumers may not be in a good position to judge the financial soundness of a particular dealer. Requirements that dealers have sufficient financial and material resources is likely aimed at reducing such risks.

Requirements for dealers to keep a dealing register, and restrictions on the

8.1 Objectives for regulation of motor vehicle dealers



sale of vehicles without identification numbers are aimed at limiting trade in stolen vehicles.

A concern of Part 10 is also to ensure fair trading in the market for motor vehicles. Provisions such as requiring use of standard form contracts and requiring that these contracts are fully completed before signing, prohibiting adjustments to a vehicle's odometer, and restrictions on dealings with minors are aimed at this fair trading objective.

The fit and proper person licensing requirement can be seen as cutting across the range of regulatory objectives.

Where do the restrictions to competition lie?

There are a number of restrictions to competition contained in Part 10 of CAFTA. These are:

- restrictions on entry facing motor vehicle dealers — the right to act as a dealer is restricted to those meeting the requirements to hold a licence such as being a fit and proper person and having sufficient financial and material resources to conduct business;
- restrictions on entry facing dealers' managers — only persons regarded as fit and proper persons can be approved as dealers' managers;
- restrictions on the way dealers operate their businesses — dealers have to keep certain records, display their licences, utilise prescribed forms of contract, submit annual returns and are prevented from selling certain vehicles such as those registered interstate; and
- minimum warranties — the requirement for statutory warranties imposes a cost on dealers and also potentially crowds out the provision of other services such as pre-purchase inspection or privately provided warranties that could provide the same coverage as the statutory warranty.

Benefits and costs of regulation

The review has identified four broad restrictions on competition. This section examines the benefits and costs associated with these restrictions.

Licensing/entry requirements

Benefits

Consumers face risks arising from the financial default of the dealer with whom they are dealing. In the event of a default, consumers risk losing any deposits held by the dealers, proceeds from the sale of vehicles on consignment and also may be left with unsatisfied warranty obligations. The sufficient financial and material resources test is the primary means by which Part 10 of CAFTA attempts to reduce this risk for consumers. The aim is to screen potential entrants who may be a higher risk of financial default. The original intention of Part 10 was to supplement the test on entry with annual tests based upon the annual return required of licensees.

The sufficient financial resources component of the test aims to ensure that applicants have a minimum level of resources when they commence operations, consistent with the scale of operation they are intending. The test is based upon information supplied in a business plan that applicants are required to submit with their application. Such plans are necessarily forward looking and based on forecast revenues and costs. Because of this, such documents are unlikely to be a good predictor of business success or failure. There is also a risk that applicants will structure the information in a way that might be inaccurate in order to meet the requirements of the test.

While dealers are required to submit annual financial returns, the review team understands that the annual financial returns are currently not reviewed by DIB. A further problem with the annual test is that there is quite a delay in submission of these returns (the due date is October), diminishing the relevance of the data for assessing risk of default. Also, returns only need to be certified by an accountant. There is no guarantee that the information provided to the accountant by the licensee is an accurate reflection of the state of a business. This would only be guaranteed if accounts were audited. So, even if the annual financial returns were being checked by DIB, it is doubtful that they would be much of a signal as to the potential risk of default posed by a particular dealer. The review considers that the actual benefits derived by the requirement to submit annual financial records is close to zero.

In summary, the main benefits derived from the sufficient financial resources test are derived from the test applied on entry. The majority of these benefits would seem to be generated through the requirement that applicants work through the full financial implications of their proposed business activity. This may be particularly important for small businesses or inexperienced business people. The test is unlikely to pick up those that structure their business plan in a way that does not reflect the true state of financial affairs.

Section 136 provides the power for the Commissioner to request an applicant to provide a banker's or other guarantee if it is thought to be desirable. DIB reports that the legal position of this power is questionable and no guarantees have been sought. This provision is unlikely to deliver any benefits.

The sufficient material resources requirement can be seen as supplementing the financial resources test. Requirements that applicants have suitable premises, while raising the cost of entry, could be seen as a means of reducing the incidence of 'fly-by-nighters' who might enter the industry with a basic set up, trade for a short time and then exit, leaving unsatisfied warranty obligations or debts to consumers.

The review team understands that over the period that regulation has been in place, there have been very few incidences of dealer defaults in the Territory resulting in consumer losses. The extent to which regulation has contributed to this outcome is unclear.

The other aspects of the entry test, the fit and proper person test, spans a range of objectives such as promoting fair trading in the motor vehicle sales sector and reducing avenues for stolen vehicles. Other aspects of the regulatory regime directly target these objectives. The benefits associated with these achieving these objectives are discussed further below.

The fit and proper person test is an indirect screen since it does not, and cannot, directly assess a person's intent. The test is based on the premise that past actions signal a person disposition to act improperly in the future. The value and appropriateness of a fit and proper person test is a matter of quite difficult judgement. On the one hand it could be argued the persons are entitled to a fresh start, but on the other hand, the repeat offender is not an uncommon individual. While an imperfect screen, the fit and proper person test is likely to deliver some protection to the community. The question is whether the benefits outweigh the costs imposed on the community.

One imperfect measure of the likely scale of benefits arising from entry requirements such as the fit and proper person test is the number of applications that are rejected, indicating the potential for unsuitable operators to enter the industry in the absence of regulation. Consumer Affairs reports that over the last 18 months only one application for a licence has been refused. This is likely to understate the benefits since the licence criteria is likely to deter unsuitable operators from submitting an application. Consumer Affairs reports that a large number of requests for licensing information packs do not result in a formal application. This suggests that the entry restrictions have some deterrent effect.

One interpretation of the low conversion rate of inquiries to applications (and issue of licences) is that regulation is preventing entry of persons who would have otherwise posed a risk to consumer funds or engaged in unfair trading practices. However, the low conversion rate could also suggest that there are a number of unlicensed operators who have decided against completing the requirements of licensing and who are creating risk to consumer well-being. The importance of enforcement in reducing this is risk is clear.

Costs

Consumer Affairs incurs costs arising from the processing of applications for new licences, renewal of existing licences and enforcement of the regulation. Consumer Affairs estimates that it costs it around $20 000 per annum in direct expenses such as advertising, salary of licensing officer, and insolvency checks to administer the licensing system for motor vehicles. This equates to about $180 per motor vehicle dealer licence on issue. Fees are charged for applying and maintaining a licence to cover these costs of administration (table 8.2) and can be seen to be broadly in line with administration costs. Care must be taken that the cost of licence fees and government administration costs (which are recovered through the licence fee) are not double counted in calculating the cost of regulation.

8.2 Licence fees for motor vehicle dealers

	$
Application fee for a licence by a natural person	350
Application fee for a licence by a corporation	350
Grant of a licence	
including one car yard	200
for each additional car yard	100
Annual fee for a dealer who is a natural person	
Including one car yard	200
for each additional car yard	100
Annual fee for a dealer who is a corporation	
Including one car yard	200
for each additional car yard	100
Application for approval of Manager	50
Certification of Manager	20

Source: Office of Consumer Affairs and Fair Trading.

The requirement to have a business plan may also impose costs on applicants. While it is likely that applicants do face costs in preparing such a plan, in the review team's opinion, the information requirements are not onerous. It seems unlikely that an applicant, entering into a new business venture, would not have considered their current and expected financial position and have the required information readily available.

The financial aspect of the sufficient resources test is presently vaguely specified as the 'capacity to make proper financial arrangements, as indicated by financial information provided by the applicant...to carry on business as a motor vehicle dealer'. This provides little guide to potential applicants about what might be acceptable for grant of a licence. The risk is that this test imposes costs on potential entrants such as small scale operators who could, for example, think that proper financial arrangements might mean those associated with large dealers. The extent to which this is a problem is unknown, but there would seem to be clear benefits if the financial tests could be formalised and incorporated as part of the regulation.

The material resources test requires that dealer premises are of an appropriate standard. The regulations specify these requirements in terms such as 'adequate' and 'proper' leaving interpretation to the judgement of the licensing authority. The review team has no great problem with this as long as the standards that are applied are consistent with the environment and market segment that a dealer is operating in. The review team has no evidence to suggest that this is not the case.

In its submission, the MTA observed that:

> compliance with the present legislative regime far outweighs the benefits to licensed motor vehicle dealers and consumers (MTA submission, p. 2).

Follow up interviews revealed that the MTA is of the view that requirements such as the material resources test are unnecessary as the industry has developed and matured since the time when Part 10 was introduced. They see that such requirements are overly prescriptive given the current maturity of the industry and are unnecessary.

The review team agrees that the requirements of the licence are a heavy handed form of regulation. However, the main aim of these aim of these requirements is to prevent entry of 'fly-by-night' operators as discussed above. Legitimate dealers would satisfy requirements for storage, display area and meeting zoning requirements as a matter of course. For the majority of industry participants it is doubtful that these requirements generate much of a cost burden.

By placing restrictions on entry through licensing conditions, the current regulation may limit competition in the market and allow dealers to increase prices at the expense of consumers. These higher prices would be considered an indirect cost of entry requirements such as the fit and proper person test and the financial and material resources test.

With 110 licensed dealers in the Northern Territory, such behaviour seems unlikely although it may be evident in regional areas where competition may be more limited. The opportunities for such behaviour are further mitigated by the wider scope of the used car market than just the licensed dealer segment. Competition from sales through auctions and private sales would also limit the power of dealers to raise prices.

Assessment

The initial entry requirements focus on a good character/fit and proper person test and sufficient financial and material resources test. These requirements, while imperfect tests of a licensee's financial soundness and character, would appear to offer benefits to the community through reducing the risk of financial default and supporting measures aimed at delivering fair trading outcomes and reducing the incidence of vehicle theft. However, the review team notes that the financial test is not a strong test and most of the benefits would seem to be derived from ensuring that applicants have at least thought through the financial implications of their proposed business activity and developed a business plan.

These requirements do impose costs on industry but the review has not uncovered evidence that these costs are likely to exceed the benefits delivered by regulation.

Given the nature of the financial resources test and the uncertain legal status of the power of the Commissioner to request an applicant to supply a bank or other guarantee, it is questionable whether this power delivers a net benefit.

One aspect of regulation that is likely to be delivering net cost is the annual financial return/test. While licensees are required to submit annual financial returns as a condition of their licence, these returns are not currently being reviewed by the Department. This requirement would appear to be delivering very little benefit and generating a net cost to the community.

Another aspect of the current arrangement that might be creating unnecessary cost for industry is the way the financial test is specified. There would be benefits in formalising this test to send a clear signal to potential entrants about what is required.

Conduct requirements

Benefits

The conduct requirements such as maintaining dealing registers and prohibiting the sale of vehicles without VINs are expected to deliver benefits through their effect on reducing channels for the disposal of stolen vehicles. Walker (1997) estimates that the national cost of car theft is $645 million annually. Statistics from the Northern Territory Police indicate that approximately 970 vehicles were stolen in 1998-99. While this rate is below the national average, it remains a problem for the Northern Territory community. There has been a downward trend in the number of vehicles stolen and an increase in the recovery rate since 1994. Licensing and record keeping requirements on motor vehicles dealers would be expected to augment efforts in reducing motor vehicle thefts in the Territory.

Other conduct requirements, such as the use of prescribed contracts and restrictions on dealings with those under 18 years of age, focus more on fair trading outcomes. There is no direct measure of how much benefit the community derives in this regard. One indirect measure is the rate of complaints against motor vehicle dealers.

Consumer Affairs report that in 1999 they have received 675 inquiries relating to the automotive sector (which also includes motor repairs) representing around 17 per cent of total inquiries. The MTA assists with dispute resolution involving its members. Consumer Affairs does not have a break down of the nature of complaints but the review team understands that the majority arise out of issues relating to warranties.

A better measure would the change in complaints 'before and after' the introduction of regulation but because regulation has been in place for sometime, it is not possible to get an accurate before and after picture of the rate of complaints. However, the current data does suggest that the motor vehicle dealer sector is one where there is a greater likelihood of dispute. This means that provisions such as the use of prescribed form contracts that clarify the rights and obligations of both parties will have definite benefits in reducing the incidence of disputes.

Costs

Complying with the operational requirements such as maintaining dealing registers, appropriate sales and display facilities and the use of prescribed contracts is likely to raise costs for licensed dealers. No submissions were received from stakeholders that argued whether these costs are either small or large. However, interviews with the MTA and two dealers (members of the MTA) indicated that these costs were not considered as being onerous.

Assessment

The review team is satisfied that the conduct requirements deliver net benefits to the community.

Minimum warranties

Benefits

The statutory warranty provides a benefit to the consumer since they are protected from the cost of repairing defects over the period of cover. However, the full cost of these avoided repairs cannot be considered as a full benefit of the warranty provisions. In the absence of such a provision, dealers would retain some obligation to repair vehicles under the general fit for intended purpose provisions of CAFTA. In the present context, these would require the vehicle to be safe and remain registrable for a reasonable time after purchase.

Further benefits of the warranty provisions can be seen to emerge from the previous statement in that determining what is 'safe' and 'reasonable time' is likely to be source of costly dispute between consumers and dealers (and likely to generate cost to government agencies such as Consumer Affairs). The warranty provisions in Part 10 can be seen to deliver benefits by clarifying consumer rights and dealer obligations with regard to repairing defects. While there are a high number of disputes associated with warranties, in the absence of such provisions it is possible that the rate of dispute would be much higher.

Costs

While not every car that is sold will call on the statutory warranties provided by dealers, dealers do face costs arising from warranty repairs. Some dealers have suggested that the cost of statutory warranties might average $300 per car. These costs might be lower if a dealer undertakes pre-sale maintenance. Costs of warranties will also vary with the age and type of cars that a dealer handles.

Ultimately these warranty-related costs are passed onto the consumer in the purchase price of the car. This creates a further cost for those consumers who may not wish to purchase what is effectively a form of insurance. The 'opt out' provisions where consumers can sign away their right to a statutory warranty (in the presence of an authorised officer) will in part mitigate these costs. However, this provision will not fully offset these costs since there are costs for both consumers and dealers in travelling off the dealer's premises and seeking the signature of an authorised officer.

Some customers take advantage of pre-purchase inspections to check over the mechanical soundness of a vehicle. Statutory warranties remove some of the incentives for consumers to purchase these inspection services with an adverse impact on those that offer such services.

One dealer reported that the incidence of pre-purchase inspections of vehicles bought from dealers is low with perhaps only 1 per cent of sales involving inspections. The review team has not been able to establish whether this figure is accurate but it does expect that the presence of statutory warranties would crowd out the demand for pre-inspection services to some degree — just how much is unknown.

However, while incentives for undertaking pre-purchase inspections are muted, the review team considers incentives do remain for consumers to undertake such inspections. While the statutory warranty covers repair costs over the first three months of ownership, inspections could uncover problems that might emerge over a longer time frame and represent a significant cost to the purchaser. Further, even though the consumer is protected against repair costs over the first three months of ownership, there are still costs associated with a warranty repair — for example, the inconvenience of being without a car while it is being repaired, the inconvenience of breakdowns etc.

The statutory warranty might also crowd out the private provision of equivalent warranty services. In the absence of statutory warranties, it is likely that private firms, such as those that currently issue 'after market' warranties (that is, extended period warranties that apply once the 3 month statutory period expires), might expand their coverage to cover the same things as statutory warranties.

This has been the experience in Queensland where there has been no requirement for a statutory warranty. Private insurance companies have provided warranty products that offer similar coverage to the statutory warranties provided in other jurisdictions.

Assessment

The warranty provisions offer clear benefits in terms of clarifying the rights of consumers and the obligations of dealers in relation to what constitutes a vehicle that is fit for intended purpose. The warranty provisions benefit consumers directly since they avoid the cost of unexpected repairs over the warranty period. They address a classic market failure arising from asymmetric information whereby the consumer may not be in as good a position as a dealer to assess the quality of a particular vehicle.

Dealer manager approvals

Benefits

The benefits of having a fit and proper manager in charge of a dealership are much the same as those arising from ensuring licensees are fit and proper persons. The actions of a dealer manager can undermine the objectives of licensing dealer principals, especially in relation to fair trading and disposal of stolen vehicles.

A dealer manager is an agent of the licensee. The ultimate responsibility of any actions of the dealer lie with the licensee. It would seem then that the licensee would have strong incentives to ensure that the managers they hire, operate in a manner that does not breach laws. The review team is therefore unclear on what the *incremental* benefits of requiring approval of dealer managers.

Costs

The cost of applying for approval is $50 (table 8.1). This cost is borne by the applicant (or their prospective employer). Since the fit and proper person test is an imperfect screening device, some costs would be borne by those persons who are rejected but would have been an otherwise suitable manager.

Assessment

The are definite benefits in ensuring that dealers are fit and proper persons and deal with customers in a fair manner. However, licensees, who employ dealers, have strong incentives to ensure that the persons they hire to manage their branches (and also other employees) are of suitable character and that they are unlikely to breach regulations and create a problem for the licensee. It seems likely that the objectives of regulation could be achieved in the absence of regulation. It is not clear that the provisions requiring dealers be approved deliver net incremental benefits to the community.

Alternatives to the current regulatory model

The current regulatory system follows a traditional positive licensing model with government setting and enforcing licensing standards. A key requirement of this review is to consider other regulatory models with a view to identifying less restrictive and less costly means of achieving the objectives of regulation.

The review has considered a number of alternative licensing frameworks that could be applied in the present context:

- no specific regulation;
- co-regulatory/licensing board option; and
- negative licensing.

A combination of latter two frameworks have been proposed by the MTA as part of an alternative to current arrangements. Under the MTA model, the provisions of Part 10 would be replaced by a code of practice mandated under Part 13 of CAFTA. The co-regulatory and negative licensing models are discussed in the context of the MTA proposal.

- The review has also considered a voluntary approach to warranty provision.

No regulation

Under this approach all regulation of motor vehicle dealers would be removed, meaning that any person, irrespective of background, quality of premises or level of financial resources would be able to deal in motor vehicles. The performance of dealers would be determined by market forces, the effectiveness of industry bodies, consumer awareness campaigns and general consumer protection offered through CAFTA and other general regulation.

Consumers may place greater reliance on industry run accreditation schemes. Such an arrangement could be supported by an information campaign targeted at ensuring consumers were aware of how to obtain the services of reputable dealers. The MTA currently offers such accreditation for sales persons and managers. Membership of the MTA is itself a form of accreditation since members must abide by the rules and MTA code of ethics.

However, there would be no direct controls over the behaviour of dealers who choose not to conform with the standards of industry bodies such as the MTA. These are likely to be the main cause of risk to consumers. The review team is not convinced that a no regulation approach would meet the objectives of regulation.

The MTA proposal

The MTA has suggested that current arrangements be replaced with a negative licensing regime with a co-regulatory administration of a mandatory code of practice (mandated under Part 13 of CAFTA). The model proposed by the MTA would cover the whole of the motor trades industry. Consideration of the full model is outside the scope of this review, but a revised version applicable only to motor vehicle dealers is considered here.

The MTA proposal is similar to the approach adopted in Tasmania. The Tasmanian approach is a negative licensing model whereby there is no licence requirement but motor vehicle dealers must abide by a code of conduct that specifies requirements similar to the conduct and warranty requirements of the Northern Territory provisions. The code in Tasmania is overseen by a Retail Motor Industry Monitoring Committee comprising industry and consumer representatives.

Each of the components of the MTA model is discussed separately below.

Negative licensing

Under negative licensing there would be no formal screening process as currently occurs through the licence application process. Legislation would stipulate the requirements to operate in the industry. Dealers that do not meet those requirements would be prevented from operating in the industry. An example of this is the regulation of credit providers in the Northern Territory (chapter 9).

The advantage of this approach is that it reduces administration costs associated with the application process for both dealers and the licensing authority. A disadvantage is that the application of the fit and proper and sufficient resources tests would not be possible under this model. The other conduct requirements such as maintaining a dealing register, warranties and contract requirements could apply under a negative licensing model. These could be implemented either through traditional legislative provisions (as they are now) or through a code of practice as occurs in Tasmania.

In some respects, the perpetual licence granted under the NT legislation has similar characteristics to a negative licensing approach. Once the licence is issued and the initial criteria met, a dealer can continue to operate unless they breach the requirements to operate in the industry. The key difference is that the annual reporting requirements that dealers must observe. These perform two functions. Firstly, they reduce the cost of enforcement by requiring dealers to notify changes in circumstances. Secondly, they provide a means of recouping costs of administration/ enforcement of regulation from industry. The review team sees these as advantages over a negative licensing approach.

Co-regulation

Co-regulation entails a partnership between government and industry in the regulatory process. Typically, co-regulation sees government, via the legislation, granting an independent industry body responsibility for setting the standards for accreditation or licensing of dealers. The role of government would be at the higher level — ensuring that the regulation operates in the public interest, is not anticompetitive and that the industry body is accountable.

Co-regulation is often used when occupational licensing is preferred but it is considered that the private sector can undertake regulation duties more effectively and efficiently than government, due to, for example, greater knowledge of the industry. Co-regulatory models also tend to work better where there is a high degree of cohesion in the industry.

The MTA has suggested a model whereby industry regulation is overseen by a licensing board similar to those responsible for the licensing of real estate agents, electrical worker and plumbers in the Northern Territory. These boards typically comprise representatives of industry, government, consumers and training organisations. Administration of the licensing system is handled by the Department of Industries and Business. The main difference between this model and the current licensing framework is the participation of industry and other non-government representation in the licensing process.

The MTA suggested that industry participants represent an untapped source of information and intelligence that could enhance licensing outcomes. Currently, industry can only offer their views on the appropriateness of a licence application through a written objection. It is was suggested that the written format of objections does not allow sufficient scope for industry to provide all relevant information that might impact on the decision to issue a licence.

This approach is likely to be more costly than the current licensing approach with additional costs generated by the operation of the board in the form of time commitments of board members and board administration costs. These costs may be offset by reduced costs to the Department if the input of the board leads to improved licensing outcomes and fewer consumer complaints. The Department receives only 8 to 9 applications a year. It is questionable whether it is worthwhile establishing the licensing board infrastructure for this limited number of applications.

The attractiveness of this approach over the current approach rests heavily on the ability of an industry board to make better decisions over licensing applications than are currently occurring. Unlike other industry licensing, motor vehicle dealers do not require specific educational or experience requirements. Industry intelligence would not assist in this regard.

The two main tests for an applicant are the good character and sufficient resources tests. The review team is unclear on how additional 'industry intelligence' about the character of an applicant could be applied in an approval process that is ultimately subject to appeal in court. If industry has information about the practices of an applicant or an incumbent that are harmful to consumers or other parties, it is not clear what barriers exist for this information to be transmitted to licensing authorities.

The material or financial resources test might be one area were industry expertise could assist but there would have to be strong concerns over conflicts of interest given the commercial nature of information supplied in applications.

Code of Practice

A code of practice such as that applying in Tasmania is an alternate means of mandating the various conduct requirements that apply under Part 10. A code of practice could only require dealers to be licensed but could not provide for the licensing framework — the licensing provisions of Part 10 could not be shifted to a Code of Practice.

Given that the provisions governing conduct are already established in part 10, it is not clear what advantages a code of practice would deliver over the existing approach.

Alternatives to statutory warranties

The warranty provisions can be conceptually separated from the licensing/conduct requirements. Requirements for a minimum warranty can be applied with the range of regulatory models discussed above.

The prime alternative to the current approach of statutory warranties is a no statutory warranty approach. This is the model that has applied in Queensland until recently. Under this approach, if consumers wished to be protected against defects, they would have to purchase a warranty from a private insurance company. The review team understands that privately provided warranties were available in Queensland.

The review team is attracted to such an approach since it gives consumers the choice about whether they wish to purchase this insurance or not and there is already an established market for warranties.

However, the recent NCP review of Queensland's legislation has recommended that the introduction of statutory warranties similar to those in other states (personal communication, Queensland Office of Fair Trading 5 September 2000). This is apparently out of concern that:

- consumers often misunderstand the conditions of warranties;
- the range of warranties that were available were not sufficient to meet consumer protection needs; and
- warranties were not available from all dealers.

The Queensland review also saw statutory warranties as complementing other road transport measures aimed at raising the standards of vehicles on the road.

The experience in Queensland suggests that a voluntary warranty approach might increase consumer risk and may not achieve the objectives of regulation. For these reasons, the review team is not recommending a change to the statutory warranty provisions.

Conclusion

The provisions of Part 10 seek to achieve four broad objectives:

- to reduce the risk of dealer default;
- to reduce the costs to consumers from asymmetric information;
- to reduce avenues for disposal of stolen vehicles; and
- to ensure fair trading in the market for motor vehicles.

The review team believes that the fit and proper person test and the sufficient material resources test should be retained. The review has found that while these are imperfect tests, they are likely to deliver benefits in terms of preventing higher risk entrants from generating costs for consumers. These tests could not be implemented under the negative licensing approach that was suggested in submissions as an option for change.

The review team recommends that the current positive licensing framework be retained.

The review team considers that, as a whole, the conduct provisions of Part 10, including the provision of statutory warranties, deliver clear net benefits to the community and should be retained. The MTA has proposed that these be implemented via a mandatory code of practice under Part 13. However, in view of the previous recommendation, there does not seem to be a clear benefit of shifting to such a code since licensing provisions would need to be retained under Part 10.

The MTA has proposed a co-regulatory model for the whole motor trades industry along the lines of the industry licensing boards covering real estate agents, plumbers and electrical workers. The review considered this option as it might apply to motor vehicle dealers and was unable to conclude that it offered significant benefits over the present approach in terms of licensing motor vehicle dealers.

However, the motor trades sector is one that generates a significant number of complaints for Consumer Affairs and there may be benefits from adopting such a model in terms of more efficient dispute resolution. The review team was not privy to the nature of complaints and their resolution and no evidence was provided to the review that such an approach would offer better dispute resolution outcomes. The review team is therefore not in a good position to judge whether such a model would be a more efficient, and lower cost approach to resolving these disputes.

The review team recommends that DIB/Consumer Affairs, in light of its experience with consumer complaints in the motor vehicle dealer sector, consider whether the industry board model would yield a more efficient

dispute resolution process than current arrangements. The review team also draws the attention of the Department to the MTA's proposal for regulation of the wider motor trades industry.

The MTA also submitted that Part 10 was in need of a general review. While the review team is not of the view that this is necessary, it does draw the attention of the DIB to this suggestion.

Notwithstanding the findings on the net benefits of regulation, the review team has identified a number of areas where changes could lead to lower costs and greater net benefits to the community.

Annual financial returns are currently not being reviewed by DIB. This requirement is not delivering benefits but is creating costs to industry. The review team further doubts the usefulness of such a test in detecting dealers at risk of default.

The review team recommends that the requirement that licensees submit annual financial returns be removed.

The financial test is currently applied to new applicants. While the review team is aware that the test is not a good predictor of future financial viability, it does offer benefits by requiring applicants to develop a business plan and think through the financial implications of their application. The requirement that applicants have sufficient financial resources also allows the Commissioner to revoke a licence in cases of bankruptcy and to investigate licensees where there is concern over their financial standing.

For these reasons, the review is recommending that the requirement for sufficient financial resources be retained. However, the exact structure of the test that is applied to new entrants is not well articulated in regulation. This may deter some potential applicants who may be unaware about what would be an acceptable financial structure for their proposed business operation. There would be benefits in specifying the requirements of the financial test in regulation or in supporting documentation.

The review team recommends that the financial test applied to applicants for new licences be formalised to make requirements clearer for potential entrants.

Sections 136 and 137 allow the Commissioner to request a banker's or other guarantee from applicants. This provision has an uncertain legal standing and, given the nature of the financial test, should be removed.

The review team recommends that the powers to require a banker's guarantee be removed from the Act.

There are significant benefits from having dealer managers who act in a proper and fair manner toward consumers. There are strong incentives for licensees to ensure that they employ such managers since the licensee is ultimately and solely responsible for the actions of their manager. It is not clear to the review team that legislative approval is necessary.

The review team recommends that the requirements for approval of dealer managers be removed.

9 *Part 12 Credit providers*

PART 12 PROVIDES FOR THE NEGATIVE LICENSING of credit providers in the Territory. Negative licensing for credit providers means that, as a general rule, anyone can provide consumer credit in the Northern Territory as long as they:

- comply with the provisions of the *Consumer Credit Code*; and
- otherwise act properly, competently and fairly in the course of conducting business of a credit provider.

Restriction on entry/conduct — The *Consumer Credit Code*

Part 12 effectively restricts entry into the market for domestic credit to those firms prepared to abide by the conditions of the *Consumer Credit Code*. The *Consumer Credit Code* is a uniform national approach to regulating credit practices in Australia. The *Code* covers a range of consumer products such as personal loans, housing loans, continuing credit contracts, leases and hire purchase agreements.

The *Consumer Credit Code* is based on principles of truth-in lending which will allow borrowers to make informed choices when purchasing credit. The aim is to protect consumers from unfair or improper behaviour and to increase the efficiency of credit markets (KPMG 2000).

The responsibility for regulating the market for credit-related financial products lies with the states and territories. The Australian Securities and Investment Commission's (ASIC) Office of Consumer Protection has responsibility for enforcing general consumer protection law for financial products excluding credit. The review team understands that legislation is to be amended to extend ASIC's powers to enforce general consumer protection legislation for credit in the near future. Responsibility for the *Code* would remain with the states and territories.

Part 12 provides the Commissioner with the powers to enforce the *Code* which is enacted under the *Consumer Credit (Northern Territory) Act* and is being reviewed separately as part of a national review. The answers to the

NCP questions covering objectives, net benefits and alternatives will be addressed by that review.

Restriction on entry/conduct — other provisions

The Commissioner for Consumer Affairs can seek a court-enforceable deed of assurance from credit providers who behave improperly, negligently or unfairly in the course of conducting business as a credit provider. What constitutes such behaviour is not defined in the Act..The deed may contain assurances that the credit provider will:

- discontinue the unacceptable activity;
- in future, comply with CAFTA and/or the *Consumer Credit Code*; and
- rectify the consequences of the unacceptable activity leading to the assurance.

The Courts may impose penalties for breaching the deed of assurance including prohibition from carrying on business of a credit provider. Persons in breach of a Court imposed prohibition order face fines of $30 000 or 6 months imprisonment.

At the time of this review, no deeds of assurance for either breaches of the *Code* or other unacceptable behaviour had been sought by the Commissioner.

It is clear that this provision represents a restriction on competition arising from a barrier to entry into the credit providers market — entry is restricted to credit providers that behave properly, competently and fairly.

Objective of the restriction

Nationally, consumer credit is a significant economic activity with over $100 billion in outstanding consumer debt (MCCA 1999). The nature of typical consumer credit purchases for example, houses, motor vehicles, appliances mean that the amounts involved in individual transactions can be quite significant. The impact of unfair or improper behaviour is potentially quite significant. The objective of the provisions is to protect consumers from such behaviour, that is not covered by the *Code*, and to avoid the potential losses that might ensue.

Net benefits of the restriction

The benefits of the requirement relating to proper conduct lies in reducing the risks to consumers from unfair, fraudulent or other improper acts that might harm consumers but that are not covered by the provisions of the *Consumer Credit Code*. The provisions of the *Code* are intended to improve transparency in the cost of credit products to offset possible information imbalances that weigh against consumers and impede their ability to make informed choices over credit products. However, financial markets feature a high degree product innovation. While the *Code* is intended to promote innovation and choice and is designed to be able to accommodate changes in the financial markets, over time, credit products/arrangement might emerge that fall outside the scope of the *Code*. The current arrangements provide the Commissioner with powers to act if such innovations were detrimental to consumer welfare.

There are also likely to be benefits to the industry, or perhaps particular segments of the industry, in terms of reputation and consumer confidence, by ensuring that unfair or incompetent operators do not operate.

The anti-competitive effect of the restriction and therefore, the cost generated by the restrictions is likely to be low, perhaps close to zero. With negative licensing, compliance costs associated with the licensing *framework* (as opposed to the *requirements* of licensing) are kept to a minimum — there are no formal administrative processes for participants to complete to either enter or continue operating in the credit market. In the present context, the requirement to act properly, fairly and competently is unlikely to have any costs for the vast majority of industry participants.

Alternative approaches

The provisions relating to proper conduct already represent a relatively limited intervention in the market and there are not a large range of alternatives that might be applied. One alternative would be to remove the provision and rely on the Consumer Code to deliver consumer protection. However, as discussed above, there may be situations that the Code may not cover. Adoption of this approach would leave consumer exposed to such risk but without a significant reduction in cost. This approach is unlikely to deliver higher net benefits than the current approach.

Conclusion

The requirement that credit providers act properly, competently and fairly is unlikely have a material effect on competition in the consumer credit market. The principal benefit of the requirement is that it provides additional protection to consumers from undesirable behaviour that might not be covered by the existing *Consumer Credit Code*. There are clear benefits from avoiding unfair and improper behaviour in the credit market. The cost of retaining this restriction in likely to be very low and outweighed by the expected benefits from this protection.

The review team recommends that the power for the Commissioner to request a credit provider to execute a deed of assurance if the credit provider acts improperly, negligently or unfairly be retained.

10 Part 13 Codes of Practice — Tow Truck Operators

General provisions

Part 13 of CAFTA provides for the prescription of a code of practice for fair dealing:

- between a particular class of suppliers and consumers; or
- by a particular class of persons in relation to consumers.

A code is enacted through regulations under CAFTA with the Commissioner responsible for enforcement. Where breaches of a prescribed code occur, the Commissioner has the right to request that the person/business undertake to:

- discontinue the conduct;
- comply with the code of practice in the future; and
- take action to rectify the consequences of the contravention.

These undertakings are enforceable in the courts.

Tow Truck Operators Code of Practice

There is only one code of practice currently prescribed under Part 13. This code, contained in the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations* governs the conduct of tow truck operators at police controlled accident sites.

The current code is a joint initiative of Consumer Affairs and Fair Trading and MTA and replaced a MTA-run roster system that operated during the early 1990s. The inclusion of the code under Part 13 of CAFTA was in part motivated by concern that the industry-run roster system breached the *Trade Practices Act 1974*. Prior to the operation of the MTA-run code, the Northern Territory Police ran an informal roster for about 30 years.

An Administering Authority administers the Code. The Authority currently comprises representatives from Consumer Affairs, Insurance Council of Australia, Motor Trades Association, Automobile Association of the Northern Territory, the Consumer Affairs Council and the Northern Territory Police. The Authority is supported by an Executive Officer from the Department of Industries and Business.

The key elements of the code are:

- a roster system allocating work at police controlled accident sites among all operators operating in a particular area;
- complaint handling and disciplinary procedures;
- standards governing the premises where vehicles are stored;
- a requirement that towing vehicles have a legal capacity to tow a vehicle, are compliant with provisions of general motor vehicle and traffic regulation and are fitted with radio equipment;
- insurance coverage in respect of legal liabilities that might be incurred during towing;
- procedures for attending police controlled accident sites and conduct requirements at those sites and during towing;
- procedures for towing, storing, removing and surrendering vehicles;
- requirement for a secure storage area;
- prohibition of 'spotters' fees and 'off-the-hook' transactions;
- requirements for full disclosure of fees; and
- provision for the Administering Authority to prescribe scheduled fees.

The roster system

A roster operates in areas (defined by police command areas) where more than one tow truck operator wishes to service police controlled accident scenes. Rosters are in place in Darwin and Alice Springs. The management of the roster is contracted out by the MTA. The roster is open to any operator who satisfies minimum operating standards. A firm is allocated places on the roster for each truck it wishes to be available for work.

If a tow is required following an accident, police attending the scene will call the control centre. The control centre can only take calls from the police communications network and dispatches the tow truck at the top of the roster. If that truck is unavailable, it is passed over and goes to the bottom of the roster. Only the allocated truck is allowed to attend the accident site.

The allocated operator is required to provide an approved 'Authority to tow' form, which the owner of the vehicle signs, and clearly details the instructions as to where the vehicle should be towed for storage or repair.

Some types of consumers are not subject to the operation of the roster:

- vehicle rental businesses that operate over 50 vehicles in the roster area and have a formal contract for service with another party for towing from accidents; and
- the owner of a vehicle that is insured by an insurance company with a formal contract for towing insured vehicles from accidents.

While not a requirement of the regulation, police generally ask drivers whether they want a roster tow or whether they wish to make their own arrangements. A report on the operation of the roster is faxed to participants every fortnight to ensure transparency and accountability.

Other jurisdictions

Rosters operate in Victoria, South Australia and Tasmania. An allocated tow system is currently being introduced in New South Wales. The police departments in Tasmania and the ACT also operate non legislated rosters.

The market affected by regulation

Tow truck operators undertake a variety of work. Aside from smash towing, operators also undertake breakdown towing, trade towing (transporting vehicles for dealers and repairers) and other miscellaneous work. In other jurisdictions, smash towing and breakdown work are the predominant activities, accounting for around 80 per cent of work in New South Wales. Given the nature of the Northern Territory, long distance breakdown or smash towing is common, especially in regional centres.

The Code of Practice only covers towing from police controlled accident sites. It does not regulate breakdown or trade towing. These activities are only affected by the regulation to the extent that minimum operational standards affect standards across the entire range of work that an operator might undertake.

There are currently 8 firms operating 27 vehicles on the Darwin roster. Two firms operating 5 vehicles are currently on the Alice Springs roster. During 1998-99 there were a total of 511 roster tows (427 in Darwin and 84 in Alice Springs). There are also some firms that do not participate in the roster system and therefore do not engage in recovery work from accident sites. As in other states, a number of operators are vertically integrated with smash repair operations. The MTA suggested that all but two of the operators on the Darwin roster were integrated with a smash repair business.

The MTA estimates that approximately 90 per cent of operators in Darwin and two thirds of operators on the Alice Springs are members of its organisation.

Objectives of the regulation

The Regulations specify two broad objectives:

- to ensure that persons involved in a motor vehicle accident are not subjected to distressing, manipulative or unfair competition at the time of the accident; and
- to establish operational practices that:
  - clarify the rights and obligations of clients and tow truck operators in respect of service provided under the code and by doing so, promote fair trading practices and public order;
  - ensure the material and emotional interests of clients are protected and remain predominant in respect of competition between operators;
  - encourage and develop high levels of professional conduct and service to the public; and
  - establish appropriate mechanisms to deal with complaints against tow truck operators alleging breaches of the code from clients, the Northern Territory Police or other operators.

From these stated objectives, it is clear that the Code of Practice is seeking to address behaviours arising from uncontrolled access to accident sites. Since some form of roster system, formal and informal, has operated for most of the last 40 years in the Territory, there is not a wealth of examples of the type of behaviour that the Code of Practice, and the roster system in particular, are attempting to control. A 1998 review in New South Wales, where there was no roster system in place (at the time of the review), found:

- ongoing incidents of property damage and personal injury as tow trucks 'race' to the scene of accident;

- harassment of vehicle drivers by tow truck operators trying to get business at the accident scene;
- violent behaviour against some tow truck operators by other operators attempting to secure a tow; and
- payment of 'drop fees' or secret commissions by smash repairers to tow truck operators, and the loading of these fees into repair costs (Anderson 1998).

There is some evidence that such behaviour might emerge in the Northern Territory in the absence of a roster system. The review team has been informed of incidents in the 1990s, when a roster scheme was not in place, which involved operators speeding to crash sites and consequent harassment of crash victims for towing work. These events led to the establishment of the early MTA-run allocation scheme.

Where do the restrictions to competition lie?

The Code of Practice potentially restricts competition in four broad ways:

- through the operation of the roster system;
- through the imposition of certain minimum operational standards;
- through the prohibition of certain payment types; and
- the power to regulate prices.

This section explains how these features can restrict competition.

The roster system

The roster effectively divides the market for towing from police controlled accident sites equally among those operators that participate on the roster. Competition is therefore restricted because:

- operators that are not on the roster are prevented from towing from police controlled accident sites; and
- operators on the roster are prevented from competing with other operators with a view to increasing their share of the market.

Minimum operational standards

Minimum operational standards impose costs on those operators that seek to be part of the roster system. Firms that are unable to meet the costs of complying with these standards are therefore restricted from entering the market for towing from police controlled accident sites. These costs, which are likely to be largely overhead costs, may have a greater impact on the ability of smaller firms to compete.

Prohibition of certain payment types

By prohibiting spotters fees and off the hook transactions, the Code of Practice removes possible methods by which operators (and also participants in other sectors such as the smash-repair industry) from gaining a competitive advantage over rival firms.

Provision for price control

Under the Regulations, the Administering Authority may prescribe a fee schedule for the provision of rostered towing services. The Authority does not currently prescribe fees. The prescription of fees would potentially limit competition by preventing, for example, operators offering a better quality service at a price higher than the scheduled fee. The incentives for improving service quality would be reduced.

The Administering Authority has considered whether it should ask roster participants for their schedule of fees with a view to prescribing a set fee. However, it has decided not to prescribe fees preferring charges to be set by market forces. It has decided to reserve its powers should problems emerge within the roster.

Costs and benefits

Benefits

The roster system

One benefit of regulating tow truck operators' access to accident sites is the avoided cost of property damage and personal injury that may have been caused by operators 'racing' to an accident scene. It is difficult to quantify these benefits. However, if a death were avoided by the operation of the roster system, then benefits of regulation would be very high. In chapter 4, it was noted that an avoided death would be worth at least $2.4 million in monetary terms — before any account is taken of the pain and suffering felt by families who have experienced a loss. Regulation may also reduce incidents of violence or other illegal behaviour that has been the experience in other states.

Before a roster system was introduced in Victoria, the industry there experienced an oversupply of trucks with estimates that there was nearly four times the necessary number of trucks for the amount of smash towing work that was available. With unregulated access, there may be incentives for firms to operate more vehicles (or more powerful vehicles) than is consistent with the volume of work in order to increase the chances of being at the accident site first to win the towing work. The extent to which the Code of Practice has helped limited these incentives in the Northern Territory is unclear.

Minimum operational standards

A number of the operational standards that the Code requires are not much more than requiring compliance with existing regulation, for example, a vehicle must have a legal capacity to tow and comply with other road regulations. Inclusion and enforcement via the Code improves compliance with benefits to other road users and to consumers.

Consumers could also benefit from increased standards of service arising from minimum operational standards. Possible benefits include:

- greater certainty of their rights;
- improved transparency in the contracting process; and
- reduced costs in terms of recovering their vehicles from storage following towing.

The requirement for insurance also benefits consumers by protecting them against costs arising from damage to their vehicle during towing.

Prohibition of side payments

An aim of reforms in New South Wales in prohibiting 'off-the-hook' and other side payments to operators is to reduce the incidence of corrupt practices and associated problems of violence and intimidation in the tow truck industry. Similar benefits would expected in the Northern Territory, perhaps to a lesser extent than in New South Wales.

A flow on benefit is expected in related markets with greater freedom of choice for consumers over who undertakes their smash repairs. This would mean lower smash repair costs and improved service. Provisions for separate storage areas for towed vehicles would also facilitate competition in the smash repairs market. Anderson (1999) reports that side payments are often recouped by smash repairers in the cost of repairs. Preventing such payment would also lower smash repair costs and have an effect on insurance premiums.

Price setting powers

The need for price setting powers arises because of the potential effect of the roster system on market outcomes. With only one tow truck operator permitted at the scene of an accident under the roster system, there is potential for operators to exploit the lack of competition in order to charge consumers higher prices than they would in the absence of regulation. The idea of administered prices is then to offset any market power generated by the operation of the roster system.

As noted above, the Administering Authority has not applied its powers to regulate prices. The principal benefit of the powers, then, is likely to be through the effect of any signal to operators that if they were to attempt to exploit powers then the Authority might act by prescribing prices.

Costs

The Code of Practice could generate costs to industry and consumers in a number of different ways:

- directly – for example, the cost of administering the roster or complying with minimum operational standards;
- or indirectly – for example, through the impact on service quality or through higher prices for tows.

Direct costs

The Department of Industries and Business provides the Executive Officer for the Administering Authority. The Department estimates that the total cost of this support plus the cost of overhead costs such as telephone and postage is approximately $3000 per year. This cost is not recovered from roster participants.

The MTA charges a quarterly levy of $49 per place on the roster to cover the cost of the call centre contractor, telephone lines and administration. With 32 places on the roster currently, this equates to a total cost of around $6300 annually. Including the cost borne by the Department, the roster scheme costs around $10 000 annually to run.

The minimum operational standards require operators that wish to participate on the roster to incur costs in the form of:

- maintaining a secure storage area;
- providing a secure office area equipped with a telephone line and an operative communication system;
- operating a tow truck that complies with existing traffic and motor vehicle regulations and that carries radio equipment capable of receiving messages from its base; and
- insurance to cover legal liability that may be incurred as a result of the towing operations.

The MTA is supportive of the operational standards of the code. In their submission they note:

> We believe the current regime operates in such a way that the very best interests of consumers and operators alike are protected. No towing businesses are precluded from joining the scheme provided they meet the *reasonable* criteria set out in the Code. (MTA submission, p. 3, emphasis added)

In follow up discussions with the review team, the MTA indicated that they did not believe that the requirements of the code represent a significant *incremental* cost impost on operators. It was suggested that good business practice would see operators do much of what is required in the code anyway. For example, communication systems and insurance were considered a necessary part of a towing business by the MTA. The MTA suggested the cost of communications is falling as operators are increasingly relying on mobile phones rather than two way systems. Also, since most operators are integrated with a smash repair operation then requirements for storage are not onerous for most operators since storage facilities are required for the smash repair operation anyway.

Indirect costs – service quality

Since the roster effectively guarantees an operator's share of the market, they face reduced incentives to provide high standards of service. One aspect of service quality is response time. During stakeholder interviews, officers of the Northern Territory Police raised an issue relating to response time. There was an emerging concern that tow trucks, once allocated by the call centre, were taking too long to get to the accident scene. These delays were imposing costs on officers who had to wait at the crash scene until the tow truck arrived. The review team understands that the Police have now begun monitoring response times to establish whether this represents an on-going problem.

The Victorian job allocation system requires the allocated vehicle to be at the accident site within 30 minutes of being allocated. A similar requirement is being considered in New South Wales. The Administering Authority might consider such an approach in the Northern Territory if it is established that response times are a problem for roster tows.

Indirect costs – price

With a single operator allocated to a towing job under the roster system, there is, in some sense, a captive market. The potential exists then for operators to exploit this situation and require higher prices for these regulated tows. For example, under the earlier MTA system, the then Trade Practices Commission (now the Australian Competition and Consumer Commission (ACCC)) had reports of prices being charged for tows under the roster that were higher than were being charged for other similar towing services.

The review has not been presented with any evidence that the roster system is allowing operators to exploit the opportunity to raise prices for roster tows or that prices are otherwise higher than they would be in the absence of regulation. The review team understands from discussions with insurers that the going rate for a roster tow is around $80 during peak times. It is difficult to compare charges across states, but as a guide the New South Wales Tow Truck Industry Council sets a maximum rate of $102 for a tow from an accident scene. Insurance companies will typically have contracts with a company to handle their towing requirements. These rates might be in the order of $30 to $40 per tow. However, these are not directly comparable to the cost of rostered tows since contracts are generally volume based and also much of the towing work can be conducted during off peak times. That said, it is not clear that the cost of roster tows could be considered as being way out of line with these contract/off-peak towing costs.

While the roster systems restricts the number of tow truck operators that a consumer might negotiate with at the scene of an accident, the effect on competition needs to be considered in the context of the wider chain of events following an accident.

Approximately two thirds of accidents are covered by insurance (B. Pratt, Territory Insurance Office, Personal Communication, 25 August 2000). In these cases, the cost of towing from the accident scene will form part of the insurance claim. The insurance company will typically query any amount for a tow that looks to be unreasonable (insurance companies will typically be aware of the scheduled rates charged by towers and what is charged in other areas). If the charge cannot be justified, the tow truck operator faces the risk that the insurance company will not cover the cost of the tow. This provides additional pressure on tow truck operators to resist charging consumers higher prices for roster tows. Further pressure on operators might also be generated through reputation effects. If an operator earns a reputation for inflating costs, insurance companies may be less inclined to engage them for other work such as contract towing.

Assessment

The review team is satisfied that the various provisions of the Code of Practice deliver benefits to the community that exceed compliance costs and other indirect costs.

Alternative forms of regulation

- A key requirement for an NCP review is to examine other ways of meeting the objectives of regulation in a lower cost, less restrictive way.

Earlier models

- At various times three different models of regulation have been tried:
- operation of a roster by the Northern Territory Police;
- self regulation by the peak industry group — the MTA; and
- the current co-regulatory approach.

Over time, earlier models have been improved and replaced. The current system for example, offers greater transparency than its predecessors and has the force of law. There is no evidence that suggests that it would be worthwhile revisiting past models as a means of delivering regulatory objectives at lower cost. These earlier models suffered from significant problems:

- the roster system operated by the Northern Territory Police, created problems for the Police in terms of claims of favouritism. It also offers no safeguards in terms of possible price exploitation;
- the self regulatory approach faces the costs of obtaining ACCC approval and has the disadvantage of not being backed by the force of law.

Further, the groups that might be potentially involved have not expressed an interest in revisiting earlier schemes.

For example, the MTA submitted:

> ...the Code has been successful in refining the operation of the scheme to its best possible operational parameters. We would not wish to see any aspects of it changed. (MTA submission, p. 3)

Contract tower

A possible alternative to the current system is for all accident towing to be handled by a single contract tower. Currently, all police towing is handled under a single contract, which is open to competitive tender. Insurance companies have similar arrangements.

Under this model, towing firms would tender for the contract rights with the successful firm having the sole rights for towing from police controlled accident scenes for the period of the contract. DIB or other organisation such as the police might run the tender. Firms could bid against specified quality criteria such as minimum response times or storage area requirements. The tender would be awarded to the bidder offering the lowest charge per tow. This charge would be paid by consumers when a roster tow is required. An approach similar to this operates in Western Australia where the Automobile Association has a contract for towing in certain metropolitan areas.

This model would be expected to offer similar outcomes to the current system in terms of public safety and behaviour at accident sites (as with the present system, a form of property right is effectively established over the tow reducing the costs associated with operators 'racing' for a tow). On the cost side, a competitive tender is likely to mean that the cost of roster tows is minimised (as a result of tender process) and response times would be a requirement of the tender. However, given that there is little evidence that the present approach is leading to higher prices to consumers, it is not clear that the single contractor model has much to offer in this regard.

The main disadvantage of the single contractor model is that it would have an uncertain effect on industry structure. The present system spreads approximately 420 roster tows across 8 firms and 27 vehicles. The single contractor approach would see a single firm capturing all these tows. The effect of this on the wider market for towing service is unclear but there would seem to be a realistic risk that the monopoly position in the rostered towing market could spill over into the unregulated market segments. While it could be argued that the current approach is also influencing market structure by guaranteeing a certain market share to all firms, it is unlikely that an unregulated market would see the emergence of a single monopoly operator.

The contract tower approach is unlikely to offer significant additional benefits over the present approach but carries with it, the risk that it will significantly affect the structure of the towing industry in the Northern Territory. The review team does not consider that this approach is superior to the current system.

Alternative technologies

The issues paper for this review asked stakeholders to identify whether new or emerging technologies offer alternatives means of meeting the objectives of regulation. No alternatives were suggested in submissions.

The issues paper also asked whether an electronic job allocation system similar to those used in the taxi industry, perhaps incorporating a real time bidding system whereby operators' bids for the price of the tow determines the order of dispatch could be applied. The review team received no indication about whether such an approach would be feasible.

It does, however, seem unlikely that such a system would be cost effective in the Northern Territory. The costs of establishing a network system for a taxi fleet of around 300 vehicles has been estimated at around $1.9 million with annual operating costs of around $900 000 (IPART 1999). These estimates are likely to include costs that would not be required in the present context (for example, driver safety measures such as GPS positioning) but suggest that, with just over 400 tows spread across 27 vehicles, this option would be prohibitively expensive at the current time.

Conclusions

The Tow Truck Operators Code of Practice offers significant public benefits in terms of avoiding the type of undesirable behaviour that has been seen in jurisdictions where attendance at accident sites is unregulated. The Code has strong support from both industry and government. The code imposes some costs in terms of standards but these are unlikely to be significant, with requirements in line with what a sound operator would have in place anyway.

The code does restrict competition but any adverse effects on prices appear to be mitigated by the effect of scrutiny by the insurance industry and also the threat of prescribed pricing by the Administering Authority. The Administering Authority has taken a sensible, wait and see approach to the exercise of its powers relating to price controls. In the review team's opinion there is a strong net public benefit case for the retention of the current arrangements.

The review team recommends that the *Consumer Affairs and Fair Trading (Tow Truck Operators Code of Practice) Regulations* be retained.

The review team understands that the current practice is for the Northern Territory Police to offer accident victims the choice of a roster tow or to make their own arrangements for a tow. This practice is not required in regulations which only offer exemption for:

- vehicle rental businesses that operate over 50 vehicles in the roster area and have a formal contract for service with another party for towing from accidents; and
- owners of vehicles that are insured by an insurance company with a formal contract for towing insured vehicles from accidents.

As long as other restrictions relating to attendance of tow truck operators at accident sites remain, the review team cannot see a strong reason why regulations should not allow all consumers to elect a tower of choice in preference to a rostered tow. This would be in line with current practice at accident sites.

The review team recommends that the right for all consumers to opt for a tow of their choice be formalised in the regulations.

11 Part 14 Pawnbrokers and Second Hand Dealers

Requirements of the Act

Pawnbrokers and second hand dealers require a licence under Part 14 of CAFTA to operate in the Northern Territory. Part 14 imposes certain requirements on licensees in terms of record keeping, contracts, and the redemption and sale of goods. The Act also provides for the powers of the Police with respect to the entry of premises and the seizure of goods.

Licensing

Applicants for a pawnbroker or second hand dealer licence must apply to the Commissioner for Consumer Affairs. Applicants must provide proof of identity. The Commissioner advises the Northern Territory Police and also advertises the application in relevant newspapers. The Commissioner of Police and other members of the public may object to the granting of a licence to an applicant.

Licences can only be granted to applicants:

- over the age of 18 years of age;
- who have not, in the past 10 years, been convicted of, or face a pending charge, relating to an offence involving dishonesty, fraud or stealing;
- who are of good character and in all respects a fit and proper person to hold a licence;
- in the case of pawnbrokers, have adequate arrangements for the safe keeping of pawned goods; and
- have not been disqualified or suspended from holding a similar licence.
- The Commissioner also needs to be satisfied that there will be adequate supervision and control of business operations and that there is no other good reason why the licence should be granted.

- Licences may be suspended or cancelled if the Commissioner is no longer satisfied that the conditions for granting a licence are met.

- All Australian jurisdictions impose similar restrictions on who may operate as a pawnbroker or second hand dealer. Most jurisdictions require operators to obtain a formal licence although South Australia and Tasmania apply a combination of a registration and negative licensing. Under this scheme persons are not permitted to operate as a pawnbroker or second hand dealer if the do not meet specified requirements (fit and proper person, not insolvent, no criminal history) — the negative licence — but must notify the Police that they are or are intending to operate — registration. There is no requirement for prior approval from a regulatory body as in the Northern Territory. Victoria operates what it calls a registration system, but is in effect more akin to licensing system of the Territory with the Business Licensing Authority performing checks before an operator is registered.

Conduct requirements

Record keeping

There are two main record requirements for licensees to meet. Firstly, licensees must maintain records of employees involved in entering into contracts for one year after the termination of employment. These records must include a certified photograph of the employee.

The second set of information relates to the purchase and sale of goods by pawnbrokers and second hand dealers. Table 11.1 describes the type of information that must be kept by licensees. For both pawnbrokers and second hand dealers, these records must be kept in electronic or in a bound book form for a period of one year.

The *Regulations* also contain specific provisions for compact discs (CDs). Licensees are required to keep a record of both the name and artist of CDs.

All jurisdictions require records to be kept. In New South Wales and Western Australia, licensees are required to keep records on computer. While the Northern Territory legislation allows for records to be kept in an electronic form, it is not a requirement.

Contracts

Neither pawnbrokers nor second hand dealers can enter into contracts with persons under 18 years of age or apparently affected by alcohol or a drug.

Both groups also must obtain the other party's name and address and verify their identify through photographic identification such as a passport or driver's licence.

Licensees are also required to provide written contracts to persons they are lending money to (in the case of pawnbrokers) or purchasing goods from (in the case of second hand dealers). The Act also requires employees who are making contracts to wear identification.

Requirements to identify a seller of goods are common features of regulation across Australia. These requirements are in place to provide a deterrent to those seeking to sell stolen property. Should a person sell stolen goods, the identification and record keeping requirements could aid the Police to track and prosecute offenders.

Redemption and sale of goods

The standard period for retaining pawned goods is one month, although parties may agree to a longer period. During that period the goods may be redeemed upon presentation of a pawn ticket and payment of the contracted amount. After the redemption period has expired, the pawnbroker is required to sell redeemed goods as soon as practical, and at the best price that could reasonably be obtained. Any surplus exceeding the charges payable under the contract is due to the other party to the contract. The pawnbroker is required to contact the other party where the surplus exceeds $50.

In contrast to some other jurisdictions, the Northern Territory does not require that unredeemed goods be sold at auction. New South Wales, Victoria, ACT, Tasmania and Queensland all require disposal at public auction. This is presumably to ensure disposal is carried out in a transparent manner that achieves the highest price possible for the pawned goods.

Second hand dealers are required to retain all goods in their original condition for 14 days after they were obtained. Holding times of between 5 and 14 days are required across all Australian jurisdictions. The aim of these provisions is to provide opportunity for:

- Police to investigate stolen items; and
- to allow goods to be identified by victims of crime prior to goods being sold by the dealer.

11.1 Records to be kept by pawnbrokers and second hand dealers

Pawnbrokers	*Second hand dealers*
A pawnbroker must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the pawnbroker:	A second hand dealer must ensure that the following details are recorded in relation to each contract as soon as the information becomes available to the dealer:
a distinguishing number for the contract;	a distinguishing number for the contract;
the full name and current residential address of the party pawning the goods;	the full name and current residential address of the party offering the goods;
where verification of identity is required under section 277, the form of identification used to verify the identity of the party pawning the goods and the number (if any) of the identification document;	where verification of identity is required under section 277, the form of identification used to verify the identity of the party offering the goods and the number (if any) of the identification document;
the date and time of the contract;	the date and time of the contract;
a description of each of the goods to be pawned including, where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;	a description of each of the goods accepted by the dealer including, where applicable to the goods, the type, size, colour, brand, serial number and any distinguishing feature;
the amount lent in respect of each of the pawned goods;	the consideration provided by the dealer for the accepted goods;
the interest to be paid on the amount lent expressed: as a percentage rate; and as an amount in dollar terms to be paid for each week or month, as the case may be, of the loan;	the name of the person accepting the goods as, or on behalf of, the dealer; the premises where the goods will be kept during the period referred to in section 299, and if the goods are moved, the name and address of the location of the goods; and
the types of charges that are, or may become, payable, including those that may become payable in the event of the sale of the goods, and the amount (if known) of the charges;	if the goods are disposed of by the dealer, the date of disposal.
the redemption period if it is longer than one month;	
the name of the person accepting the goods in pawn as, or on behalf of, the pawnbroker;	
the amount of any repayment made towards satisfaction of the loan;	
the premises where the goods will be located during the redemption period, and if the goods are moved, the name and address of the location of the goods;	
if the redemption period is extended, the new redemption period and the date of the agreement to extent the period;	
if unredeemed goods are sold: the date of sale; and the details referred to in section 296(1); and	
the sale price of unredeemed goods.	

Source: *Consumer Affairs and Fair Trading Act.*

Enforcement

Division 4 of Part 14 provides certain power of entry, inspection and seizure of goods by the Police. These powers relate to:

- the entry to, and inspection of, licensed premises without warrant during business hours;

- the provision of assistance to police with respect to the location of goods and records;
- the right to seize records;
- the right to require that licensees cease dealing in goods that are suspected to be stolen; and
- the right to seize suspected stolen goods.

The Act also gives the power of arrest to licensees where they have reasonable cause to suspect that the person offering the goods for pawn, sale or exchange has committed an offence.

The market affected by regulation

There are currently 38 pawnbrokers and second hand dealers licensed in the Northern Territory, with licences split evenly across second hand dealer, pawnbroker and combined licence categories. Pawnbrokers are businesses that lend money on the security of pawned goods or receive goods under contract where the seller has the right to buy back goods. In contrast, second hand dealers are in the business of purchasing goods for the purpose of sale or exchange. They do not participate in money lending operations unless they hold a combined licence.

Pawnbroking is a form of credit market but is not generally subject to the provisions of the *Consumer Credit Code* although sections 70-72 of the *Code* allow for reopening provisions relating to unjust contracts. Licensees range from large national chains down to smaller sole proprietors. No statistics on the size of the industry in the Northern Territory in value terms are available.

Certain operators are exempt from holding a licence:

- auctioneers licensed under the *Auctioneers Act;*
- firearms dealers licensed under the *Firearms Act;*
- licensed motor vehicle dealers;
- corporations within the meaning of the *Financial Corporations Act;*
- banks within the meaning of the *Banking Act;*
- a financial institution with the meaning of the Financial Institutions (NT) Code;
- a person who sells goods within the meaning of the *Disposal of Uncollected Goods Act;* or

- a person who sells second hand parts for motor vehicles.

Generally these exemptions apply to avoid double regulating groups who are covered by other regulation.

The definitions of what constitutes a pawnbroker and second hand dealer are based on the notion of 'conducting business'. This approach is common across other Australian jurisdictions. CAFTA leaves the interpretation of 'conducting business' to the licensing and enforcement agencies. Legislation in other jurisdictions does the same although in New South Wales, the *Pawnbrokers and Second-hand Dealers Act* presumes that a person is carrying on the business of buying or selling second hand goods if they, on more than 12 days in a year, sold any second hand goods.

Stallholders at Sunday or community markets are not explicitly licensed under the Act. However, stallholders are required to have a licence if they are conducting business as a second hand dealer. Three licences have been issued to sellers of goods at markets.

The *Consumer Affairs and Fair Trading (Pawnbrokers and Second Hand Dealers) Regulations* also defines a list of 24 goods that are not treated as second hand goods. Excluded goods are regarded as at a low risk of being stolen.

Objectives of legislation

While there are no stated objectives in the legislation for the licensing of pawnbrokers and second hand dealers, licensing information material from Consumer Affairs suggests that the objectives of licensing are to prevent unauthorised disposals of stolen goods and to assist police to track stolen property. It also suggests that the legislation aims to protect both traders and consumers against unauthorised disposal of stolen goods.

This view is supported by the Attorney-General in his second reading speech to the Assembly in relation to the introduction of the provisions for pawnbrokers and second hand dealers, where he stated:

> The Consumer Affairs and Fair Trading Amendment Bill is a significant step forward in crime prevention and control. It will allow for tighter control of this industry and will assist law enforcement agencies in tracing stolen goods and apprehending offenders. Ultimately, the bill will place greater emphasis on industry members to check the identity of sellers. (Seventh Assembly First Session, 27 February 1996, Parliamentary Record No. 20, p. 6946.)

Consumer protection could be seen as a further objective of the regulation in respect to pawnbrokers. Provisions relating to pawn tickets and redemption periods aim to clarify the rights of consumers. Government regulation of pawnbroking activity is typically justified on similar grounds to that of the *Consumer Credit Code* in that individual borrowers may not be well placed to understand the full terms and conditions of pawn contracts, especially where dealers do not disclose the price and other costs in terms that can be readily understood (DFT 2000c).

The provisions of Part 14 were only introduced in 1996. It is unlikely that the relevance of the Part's objectives have diminished since that time.

Where do the restrictions to competition lie?

Part 14 creates two restrictions to competition:

- restrictions on entry — licensing restricts entry to those over the age of 18 who are not undischarged bankrupts or have been convicted in the last 10 years of an offence involving dishonesty, fraud or stealing; and
- restrictions on the way dealers and pawnbrokers operate their business — for example, requirements for minimum redemption and holding periods for goods, record keeping, checks on identification and prescribed arrangements related to contracts.

Enforcement requirements give the police powers to inspect and seize property and records. These may impose costs on licensees in complying with police requests. The issues paper asked whether stakeholders considered that these powers had anti-competitive effects. No submissions were received arguing that these powers were anti-competitive. Given the nature of powers and the response of stakeholders to the issues paper, the review team does not consider that the enforcement provisions are anti-competitive.

Benefits and costs

Benefits

The restrictions to competition contained in Part 14 will deliver benefits to the extent that they are successful in meeting the objectives of regulation. The principal benefits are generated through:

- the impact on the level of crime and/or recovery of stolen goods facilitated by the provisions;

- any flow on benefits to the industry created as a result of tighter controls over participation and practices within the industry; and
- consumer benefits arising from increased transparency and clarification of their rights in dealing with pawnbrokers.

Crime prevention/recovery of stolen property

It has long been recognised that second hand dealers and pawnbrokers are a possible avenue for the disposal of stolen property. The primary benefits from regulating pawnbrokers and second hand dealers lie in assisting police track stolen property and reducing the incidence of property related crime in the Northern Territory. Property related crime is a problem in the Northern Territory, as it is elsewhere. In 1998–99 the annual report for the Northern Territory Police shows 3253 reports of unlawful entry into dwellings and other premises in the Darwin region. Reports of 'unlawful entry' rose 5.1 per cent across the Territory in 1998–99.

Nationally, John Walker of the Australian Institute of Criminology estimates the cost of breaking and entering offences to be in the order of $1.2 billion dollars a year (Walker 1997). This figure only covers the value of stolen property and associated property damage. These costs are generally reflected in the cost of home contents insurance. Additional costs are also incurred through the operation of the criminal justice system including the maintenance of police forces, courts and corrective services.

Part 14 aims to deliver these crime-related benefits in three broad ways:

- by screening those they wish to operate as pawnbrokers and second hand dealers (via the criminal history/fit and proper person test); and
- by reducing the attractiveness of disposing stolen property through second hand dealers and pawnbrokers by requiring sellers of goods to produce identification; and
- by improving the availability and access of Police to information on who is trading second hand property and where.

The 1998-99 annual report of the police department suggests these provisions have been a key factor assisting its Special Crimes Unit (SURF) to reduce the rate of unlawful entries in the Darwin region.

It is not possible to say how much each of these measures, taken separately, contributes to the crime reduction effort.

Benefits to industry

Industry also benefits indirectly from the regulation through improved industry reputation. When introduced, the Attorney-General suggested:

> [r]esponsible members of the industry will welcome this regulatory scheme as it will provide a means of dealing with less ethical and fly-by-night operators. In doing so, it will protect and enhance the reputation of the industry and foster community confidence in the business activities of licensed dealers. (Seventh Assembly First Session, 27 February 1996, Parliamentary Record No. 20, p. 6947.)

Consumers would also be expected to benefit from this enhanced confidence in dealing with a wider range of potential suppliers.

Any reduction in the rate of crime arising from regulation and also identification requirements may reduce the incidence of dealers inadvertently purchasing stolen goods and having them being seized by Police. These avoided losses are a benefit to dealers.

Benefits to consumers

The provisions governing pawnbroking activities yield benefits to consumers who seek credit from this source. Pawnbrokers operate at the low value, high risk end of the credit market and often are a borrower's last resort as a source of credit. The sums of money involved are unlikely to be as large as those involved under mainstream credit contracts but the items that are put up as collateral often hold great personal significance that gives them a value that far exceeds their market value. Given their situation, clients are often in a weak position to bargain with a pawnbroker.

The provisions in Part 14 relating to pawnbrokers are intended to deliver benefits by preventing pawnbrokers from exploiting their position of strength, by improving the transparency of charges, rights and obligations of parties to the pawn contract. Like the intentions of the *Consumer Credit Code*, the aim is to ensure that consumers are fully aware of the commitments they are signing up to with the pawnbroker. The consumer benefits from being able to make a fully informed decision to deal with a pawnbroker.

Costs

Offsetting the benefits of regulation are the direct costs of administering and complying with its requirements. There may also be indirect costs if the restrictions on entry reduce the competitive pressures on prices or restrict consumer choice.

Administration costs

Consumer Affairs employs a licensing officer who is responsible for, among other duties, licensing pawnbrokers and second hand dealers. Consumer Affairs estimates that it costs it around $12 000 to cover direct expenses such as advertising, licensing officer's time and insolvency checks.

Enforcement of the provisions of Part 14 is the responsibility of the Northern Territory Police. Since it is likely that the police would ordinarily be investigating stolen goods and visiting pawnbrokers and second hand dealers as part of their duties in the absence of legislation, the additional costs associated with enforcement are likely to be small. It is also possible that there is a cost saving to police if the provisions make tracking of stolen goods easier and more efficient.

To the extent that licence fees are cost reflective then the cost of administration is likely to be borne by industry. Table 11.2 shows the current schedule of licence fees. With 38 licensees, the $12 000 cost of administration is equivalent to around $315 per licence. Annual licence fees range between $150 to $200 for a one year licence suggesting that the government bears a portion of this administration cost.

Compliance costs

The costs of complying with regulations are likely to be mainly created by the cost of generating and keeping records of transactions and employees, holding stock for 14 days in the original condition before resale (in the case of second hand dealers), and the costs of producing identification documents for employees.

In some cases these costs would be borne by the licensee in the absence of regulation anyway. For example, employee records need to be kept for five years for tax purposes. Similarly, the review team would expect that dealers would keep some form of record of inventory as part of normal business practice. Pawnbrokers would also be expected to keep some record of who they have lent money to. The record keeping requirements of the Act would not appear to represent an onerous burden on licensees.

11.2 Licence fees payable by pawnbrokers and second hand dealers

	Application fee	*Licence fee*
	$	$
Pawnbrokers or second hand dealers licence		
Natural person		
1 year	50	150
2 year	50	250
3 year	50	350
Corporation		
1 year	100	150
2 year	100	250
3 year	100	350
Combined licence		
Natural person		
1 year	75	200
2 year	75	350
3 year	75	450
Corporation		
1 year	150	200
2 year	150	350
3 year	150	450

Source: Office of Consumer Affairs and Fair Trading.

Unlike other regulations under CAFTA, the Pawnbrokers and Second Hand Dealer Regulations do not specify the prescribed form for contracts or records to be kept by licensees. There may be some benefit to licensees if a model record were developed by Consumer Affairs or the Northern Territory Police an information sheet for licensees.

The minimum period for holding stock represents a cost to licensees since their working capital is tied up in the stock being held. Assuming an interest rate of 9 per cent (a rate that might be expected to be paid on an overdraft facility) then the 14 day holding period generates an expected holding cost of approximately $3.50 for every $1000 worth of stock held by the dealer.

Indirect costs

Indirect costs will typically be very difficult to measure in practice. These costs would be generated if restrictions on entry reduce consumer choice and/or allow for higher price to be charged by those in the industry. The nature of second hand goods make comparisons of prices difficult, if not impossible.

The review team expects that these indirect costs would be low. The restrictions on entry into the market are limited to fit and proper person and solvency requirements and Consumer Affairs reports that no applications for licences have been refused since the legislation has been introduced.

Assessment

The review has identified a number of benefits arising from Part 14 mainly arising from crime prevention and the recovery of stolen property. There are undoubtedly some costs arising from the entry and conduct requirements on industry participants. However, the review has not been presented with any evidence that suggests that these costs outweigh the benefits delivered by controls over pawnbrokers and second hand dealers.

Alternatives forms of regulation

While the current regulatory arrangements are, on the balance of available evidence, likely to deliver net benefits, an important question for the review is whether these net benefits could be increased by applying less costly means of regulation. The review team has considered a range of alternative approaches to achieving the objectives of the legislation. These include:

- no specific regulation;
- industry self/co-regulation;
- negative licensing; and
- current approach with amendment.

No specific regulation

This option would see the complete removal of licensing and its associated checks allowing any person, regardless of their background, to act as a pawnbroker or second hand dealer. Consumers would to have to rely on common law, the criminal code or the general provisions of CAFTA for redress. Police would lose their special powers of inspection and seizure without warrant under this approach.

Given that Part 14 is a recent addition to CAFTA, it is unlikely that circumstances in the Territory would have changed to the extent that special regulation is no longer justified. It is unlikely that the objectives and therefore the benefits of regulation would be met under this approach.

Industry self/co-regulation

Self-regulation is a non-mandatory approach where an industry body assumes responsibility for setting standards and policing the conduct of persons involved in the industry, rather than the industry being regulated by government.

Co-regulation is based on regulation by industry but backed by government legislation. Under such a partnership approach, industry in association with government would set the regulatory standards and administer and enforce the licensing system. Any sanctions would be backed by the force of law. Involving industry in the regulatory process has the potential to result in more effective and less costly regulation.

An obvious prerequisite is that there be an industry body that is sufficiently representative of the industry. The review team is not aware of such a body in the Northern Territory. This would seem to preclude a self or co-regulatory approach to regulation.

A key objective of the current approach is to prevent entry into the industry of persons that are likely be involved in criminal activities such as receiving stolen property. A voluntary approach such as self regulation is unlikely to be effective in this regard.

Negative licensing

Negative licensing offers some control over industry participation, in that persons convicted of nominated offences or failing to satisfy other requirements may be prohibited from operating in the industry. Entry criteria would need to specified in such a way that it is clear to potential entrants whether they satisfy them or not. This would mean that the current requirements that persons be of good character and fit and proper, which rely on the judgement of the regulating agency, could not apply.

Requirements on pawnbrokers and second hand dealers would be much the same except that the would be no requirement to obtain a licence and there would be no central record of who is operating in the industry. Identification, record keeping and other conduct requirements could be retained.

An advantage of this approach is that it reduces the cost of administration, particularly for industry who do not have to go through a licence application process. At the same time, this approach increases the cost of enforcement. The experience in South Australia was that negative licensing, which applied prior to 1996, was a major impediment to police in identifying persons who operated as second hand dealers. This would suggest a pure negative licensing model would not be an appropriate alternative.

South Australia and Tasmania have augmented the standard negative licensing model with a registration/notification system to overcome some of the problems of a pure negative licensing approach. In those states, legislation stipulates the conditions under which persons may not operate as a pawnbroker or second hand dealer. Legislation also requires that those that are operators notify the police within a certain time period. This notification allows the police to identify who is operating as a pawnbroker or second hand dealer and also to object. In both cases, objections are handled through the courts.

This approach allows for many of the same provisions that apply under the current system (the Tasmanian legislation allows the police to object if the operator is not a fit and proper person).

The advantage of this approach lies in reducing the cost of compliance for industry participants who do not have to undergo a formal application process. However, since a key aim of regulation is to control who may enter the industry, then some form of checking of compliance with conditions still needs to be carried out. This, and the costs of doing so, would fall on the police. Unlike the current system, there is no vehicle for recouping these costs from industry. A move to this approach would see the cost of checking compliance with entry criteria shifted from industry (and DIB, to the extent that licence fees are not cost reflective) to the Northern Territory Police.

A further disadvantage of this approach is that it is likely to make the enforcement task more difficult. The positive licence approach means that those complying with regulation are more readily identified either through their signage or their licence document. Under a negative licensing approach there is a greater burden on Police to check whether a particular trader is compliant (for example, a field officer would need to radio back to base to check whether a trader has notified their existence and is compliant).

Being able to readily identify compliant traders is particularly important for consumers. A positive licence is relatively costless way of checking whether they are dealing with a bona fide second hand dealer or pawnbroker. A negative licensing approach is likely to increase consumer risk.

Overall, the negative licensing/notification model is likely to have advantages in terms of lowering compliance costs to industry. However, the nature of regulatory requirements is such that these costs rather than being eliminated are simply shifted to the Police. A further problem with this model is that is likely to increase the cost of enforcement and increase consumer risk. The review team is not convinced that this alternative approach would offer greater net benefits than that currently in place in the Northern Territory.

Current approach with amendment

Character test

The character test is a major hurdle that a person seeking a licence to operate as a second hand dealer or pawnbroker must satisfy. The current specification of the test is quite broad, requiring that the applicant:

- not have a criminal record involving fraud, dishonesty or stealing;
- that the applicant is of good character and is in all respects a fit and proper person; and
- that the applicant has not been involved in conduct of a nature that renders them unsuitable to hold a licence.

The Act leaves it to the Commissioner to decide what is 'good character' and 'fit and proper'. A concern with this approach is that it may not be clear to some potential applicants whether they would pass the character test or not. For example, a person with offences for driving under the influence may pass the criminal record test (which related to offences such as dishonesty) but may be uncertain whether they would be considered of good character. They may not risk the cost of applying. The danger is that the form of the test is preventing otherwise suitable persons from entering the industry.

An alternative approach would be to limit the test to observable characteristics of an applicant. This is the approach in South Australia and New South Wales. For example, South Australia limits the entry to those that:

- have not been convicted of an offence of dishonesty; or
- is not an undischarged bankrupt or subject to a composition or deed or scheme of arrangement for the benefit of creditors; or
- has not, during the preceding five years, been a director of a body corporate wound up for the benefit of creditors:
  - when the body was being so wound up; or
  - within the period of six months preceding the commencement of the winding up.

Under this approach a potential applicant can clearly identify whether they satisfy the criteria or not. However, a disadvantage of this approach is that it may not be practically possible to specify conditions that cover all situations where it is desirable to exclude an entrant. For example, under the current approach, the Police may object if an applicant is a known associate of a criminal gang but has no criminal convictions themselves. Further, even if it were possible to specify a condition in legislation that covers this situation, it may not desirable to exclude all such people. The danger with this alternative approach is that it may allow unsuitable persons to enter the industry since it does not allow all available information to be used in the decision process.

Adopting one approach over another involves a trade-off between transparency/simplicity on the one hand, and risk to consumer and community welfare on the other. There is not a strong case for selecting one approach over the other.

Record keeping requirements

During initial interviews, it was suggested to the review team that the ability of the Police to recover stolen goods could be improved if licensees were required to keep records electronically. Currently records may be kept in electronic form or in bound book form. The latter form is not as amenable to searching individual records for stolen property. Electronic record keeping is more easily incorporated into a searchable electronic database. The West Australian government requires all licensees to be electronically linked to the Police Services computer system, that allows it to automatically search records and cross check with stolen goods reports.

No formal submission to the review was received promoting this option. The review team has not considered the merits of this proposal which is outside the scope of this NCP review.

Conclusions

The review team is satisfied that the current provisions of Part 14 deliver benefits to the community and that these are not exceeded by compliance and other costs. Part 14 is unlikely to have a material impact on the level of competition in the second hand goods and pawnbroking markets in the Northern Territory.

The review has considered alternative models for implementing control over the second hand dealer and pawnbroking activities but none of these alternative models has clear advantages over the present approach. The closest contender is a negative licensing/registration model applied in some other Australian jurisdictions. That model offers lower costs to industry but at the expense of shifting costs to the enforcement agency, reducing the efficiency of the enforcement task and also increasing consumer risk.

The review team recommends that the provisions of Part 14 be retained.

APPENDIX

A Terms of reference

THE REVIEW OF THE LEGISLATION shall be conducted in accordance with the principles for legislation review set out in the Competition Principles Agreement. The underlying principle for the review is that legislation 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.

Without limiting the scope of the review, the review is to:

- clarify the objectives of the legislation, clearly identifying the intent of the legislation in terms of the problems it is intended to address, its relevance to the economy and contemporary issues and whether or not the legislation remains an appropriate vehicle to achieve those objectives;
- identify the nature of the restrictions to competition for all relevant provisions of the specified legislation. This analysis should draw on the seven ways identified by the National Competition Council in which legislation could restrict competition, which include:
  - governs the entry or exit of firms or individuals into or out of markets,
  - controls prices or production levels,
  - restricts the quality, level or location of goods or services available,
  - restricts advertising and promotional activities,
  - restricts price or type of input used in the production process,
  - is likely to confer significant costs on business, or
  - provides some advantages to some firms over others by, for example, shielding some activities from the pressure of competition;

- analyse the likely effect of any restriction on competition and on the economy generally;
- assess and balance the costs and benefits of the restrictions for each anticompetitive provision identified;
- consider alternative means for achieving the same result and make recommendations including nonlegislative approaches; and
- clearly make recommendations. These should flow clearly from the analysis conducted in the review. If change is not recommended and restrictions to competition are to be retained, a strong net benefit for retention must be demonstrated.

When considering the matters referred to above, the review should, where relevant, consider:

- 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 and equity;
- the interests of consumers generally or of a class of consumers;
- government legislation and policies relating to ecologically sustainable development;
- economic and regional development including employment and investment growth;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

The review shall consider and take account of relevant legislation in other Australian jurisdictions and any recent reforms or reform proposals including those relating to competition policy in other jurisdictions.

The review shall be conducted as a public review in accordance with the Guidelines for NCP legislation reviews document that has been endorsed by the NCC. In accordance with the appropriate review model used under these guidelines, the review shall consult with and take submissions from those organisations and individual stakeholders affected or regulated by the legislation, other interested Territory and Commonwealth Government organisations, other State and Territory regulatory and competition review authorities and members of the public.

References

Administering Authority for the Tow Truck Operators Code of Practice 1998, *Annual Report of the Administering Authority for the Period Ending 30 June 1998*, DIB, Darwin.

Anderson, P. 1998, *Review of the Tow Truck Industry in New South Wales, Final Report*, December.

Bargon, B. 1994, 'Hard lessons from credit reporting laws', in *Privacy and Law Reporter*, vol. 81.

Commonwealth Department of Health and Aged Care 2000, *Tobacco*, http://www.health.gov.au/pubhlth/strateg/drugs/tobacco/index.htm, accessed 15 August 2000.

George Wilkenfeld and Associates (GWA) 1999, *Regulatory Impact Statement: Energy Labelling and Minimum Energy Performance Standards for Household Electrical Appliances in Australia*, February, Australian Greenhouse Office, Canberra.

Independent Pricing and Regulatory Tribunal (IPART) 1999, *Review of the Taxi Cab and Hire Car Industries: Final Report*, IPART, Sydney.

KPMG 2000, *National Competition Policy Review of the Consumer Credit Code Issues Paper*, February, Available on the National Consumer Credit Code website: http://www.creditcode.gov.au.

Ministerial Council on Consumer Affairs (MCCA) 1999, *Uniform Consumer Credit Code: Post Implementation Review Final Report*, Available on the National Consumer Credit Code website: http://www.creditcode.gov.au.

NECP 1983, *Consolidated Papers on Energy Labelling*, Australian Minerals and Energy Council Co-ordinating Committee on Energy Conservation, National Energy Conservation Program, July.

New South Wales Department of Fair Trading (DFT) 2000a, *Regulatory Impact Statement: Fair Trading (Product Safety) Regulation 2000*, July, Sydney.

— — 2000b, *Issues Paper for National Competition Policy Review of the Fair Trading Act 1987 and Door to Door Sales Act 1967*, August, Sydney.

— — 2000c, *Issues Paper for the National Competition Policy Review of the Pawnbrokers and Second-hand Dealers Act 1996*, Sydney.

Tasman Asia Pacific 2000, *Analysis of market circumstances where industry self-regulation is likely to be most and least effective,* Report prepared for Commonwealth Treasury, Canberra.

Walker, J. 1997, *Estimates of the Costs of Crime in Australia in 1996,* Australian Institute of Criminology, Canberra.