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The National Competition Council
The National Competition Council was established on 6 November 1995 by the *Competition Policy Reform Act 1995* following agreement by the Australian Government and state and territory governments.

It is a federal statutory authority which functions as an independent advisory body for all governments on the implementation of the National Competition Policy reforms. The Council's aim is to 'improve the well being of all Australians through growth, innovation and rising productivity, and by promoting competition that is in the public interest'.

Information on the National Competition Council, its publications and its current work program can be found on the internet at www.ncc.gov.au or by contacting NCC Communications on (03) 9285 7474.

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Findings and recommendations

All Australian governments adopted the National Competition Policy (NCP) in 1995. The most extensive economic reform program in Australia's history, the NCP builds on the recognition that competition drives economic growth that, in turn, promotes higher living standards. In light of Australia's federal structure, which provides state and territory governments with Constitutional responsibility for many key areas, the NCP is a national reform program that the Council of Australian Governments (CoAG) coordinates.

While the NCP aims to promote competition, it is not about competition for its own sake: rather, the NCP aims to promote outcomes that enhance the welfare of Australians. The suite of NCP programs thus comprises a balanced mix of policy measures to advance social and environmental needs. Now in its ninth year, the NCP continues to deliver benefits for consumers, households, businesses and the environment (box 1).

The Australian Government makes payments to the states and territories as a financial incentive to implement the NCP. The payments are contingent on state and territory governments implementing the reforms they agreed to in the NCP intergovernmental agreements. The payments recognise that the states and territories have responsibility for significant elements of the NCP, yet much of the financial dividend from the economic growth arising from the NCP reforms accrues to the Australian Government through taxation.

Maximum competition payments for 2004-05 are estimated at around $778 million allocated to the states and territories on a per person basis. The Australian Government decides on the actual payments after considering the National Competition Council's advice on jurisdictions' progress in meeting their NCP obligations. While state and territory governments are not compelled to implement the NCP reforms, the Council may recommend a reduction or suspension of payments if it assesses that governments have not met their agreed commitments.

The 2003 NCP assessment was the first time that the Council recommended substantial penalties — some in the form of permanent reductions — for all state and territory governments. The Australian Government accepted all penalty recommendations. The extent and magnitude of penalty recommendations reflected that jurisdictions, as the NCP program nears completion, must meet their obligations, given the $4 billion in competition payments received between 1997-98 and 2003-04.

Box 1: A snapshot of benefits flowing from the NCP

Between 1950 and 1990, Australia slipped from being the fifth richest developed nation to being the fifteenth. This decline reflected large sectors of the economy being shielded from competition, despite an increasingly competitive global environment. Protected businesses had little incentive to reduce costs and prices, produce new and innovative products or use resources as efficiently as possible. Australian governments began to focus on the poor performance of the economy around the mid-1980s. By the early 1990s, it was apparent that a co-ordinated national approach to economic reform was needed for improved growth and job creation. This realisation was the genesis for the NCP. Since governments began to implement the NCP, Australia's economic performance has improved steadily — by 2002, Australia had regained eighth position in per person gross domestic product rankings. Australia's productivity growth in the 1990s was stronger and more sustained than ever, delivering an extra $7000 on average to Australian households (PC 2003).

- A national electricity market in southern and eastern Australia gives large consumers and some households a choice of electricity supplier. The net present value of these reform benefits over 1995–2010 is estimated at $15.8 billion in 2001 prices (Short et al 2001). In national market areas, labour and capital productivity have improved significantly and household electricity prices in Brisbane, Melbourne and Sydney fell in real terms by 1–7 per cent between 1990-91 and 2000-01 — a saving to households in 2000-01 of around $70 million (PC 2002a).
- Competitive neutrality and greater transparency and accountability in business performance has promoted a more dynamic culture within government businesses, contributing to greater efficiency, better goods and services, and cost-reflective prices. The price of public enterprise outputs increased unabated from the 1960s until public sector reforms commenced in the early 1990s. The introduction of NCP reinforced and intensified subsequent falls in the price of government services.
- Progress towards an economically viable and ecologically sustainable water industry is occurring. Consumption based pricing is encouraging more efficient water use and lower water bills for customers. Full cost recovery pricing means water businesses are better placed to maintain and replace infrastructure, ensuring more reliable and better quality service. Water trading means irrigation water is increasingly being used where it is most valued. There is now much greater community recognition of the importance of water to Australia and the need to use it wisely, and greater community involvement in water management arrangements.
- Governments have removed legislative restrictions found not to provide a net community benefit, for example:
  - — NCP reviews have shown that restricting retail trading hours is not in the public interest. Consumers have embraced the introduction of more liberal arrangements. In Sydney and Melbourne, where supermarkets can open seven days per week, around 35 per cent of consumers buy groceries on Sunday. In Perth, where only small food stores can trade on Sundays, the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000).
  - — Tasmania removed a requirement that non-hotel liquor stores sell a minimum quantity of 9 litres in each transaction. The NCP review found that the restriction not only put these stores at a competitive disadvantage relative to hotels, but encouraged irresponsible consumption of alcohol.
  - — When Victoria removed its barley marketing monopoly, growers enjoyed many more risk management options, with a variety of forward cash offers available in addition to traditional pools. Victorian growers can better align marketing risk with their cropping programs, and the prices offered have generally exceeded those in regulated state markets. Deregulation has also led to investment in new, more efficient storage and handling facilities in regional areas (Government of Victoria 2004).

The NCP entails that for governments to meet their obligations they implement staged reforms assessed against agreed implementation timeframes. For example, the review and reform of legislation containing

restrictions on competition was to have been be completed by 2000. CoAG later extended this deadline to 30 June 2002. In that year, the Council provided a further 12 month extension[1] but advised all governments that:

> *Review and/or reform activity that is incomplete or not consistent with NCP principles at June 2003 will be considered to not comply with NCP obligations. Where noncompliance is significant, because it involves an important area of regulation or several areas of regulation, the Council is likely to make adverse recommendations on payments.* (NCC 2002, p. xvi)

By the time of the 2003 NCP assessment, no government had met its review and reform obligations by the extended deadline. The Council recommended penalties accordingly, including significant penalties for governments that failed to meet critical water and energy reform obligations.

2003 competition payment penalties

For the 2003 NCP assessment, the Council regarded a government as failing to meet its obligations where (a) the review and reform of legislation was not completed or (b) completed reviews and/or reforms did not satisfy NCP principles. Based on its judgment about the significance of each compliance failure, the Council determined whether recommended penalties should take the form of specific deductions or suspensions, or whether compliance failures should be accounted for in general pool suspensions:

- **Permanent deductions** are irrevocable reductions in governments' competition payments. In 2003, the Council recommended permanent deductions for specific compliance failures. Where relevant governments did not improve compliance in these areas for this 2004 NCP assessment, the Council has recommended that the deductions continue.

- **Specific suspensions** are a temporary hold on competition payments until a government completes its compliance efforts in a particular area. In 2003, suspensions were recommended to apply until the relevant governments met pre-determined conditions, at which time the suspended 2003-04 competition payments would be released. Where commitments were not made or met for this 2004 NCP assessment, or reform action was not implemented, the Council has recommended that the suspended payments be deducted permanently.

- **Pool suspensions** apply to a pool of outstanding compliance failures. Where satisfactory progress had been made to improve compliance for this 2004 NCP assessment, the Council has recommended that the 2003 suspension be lifted or reduced, and that the funds be released to the

[1] The extension was necessitated by a discontinuity between the timing of the annual NCP assessments and the timing for governments' NCP reporting obligations.

relevant jurisdiction. Where satisfactory progress was not made, the Council has recommended that all or part of the suspension be converted to a permanent deduction.

This 2004 NCP assessment thus requires the Council to make two discrete sets of recommendations, to determine whether:

1. some or all of the suspended 2003-04 competition payments should be released to governments or deducted permanently

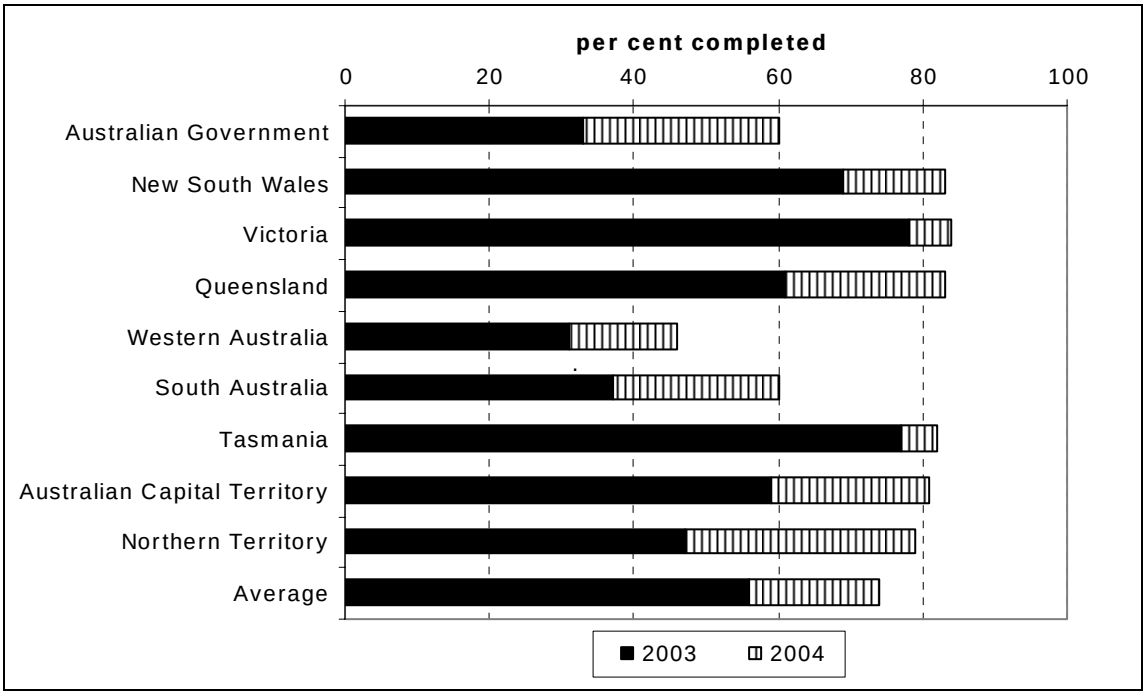
2. penalties should apply to governments' 2004-05 competition payments.

Relevant to both sets of recommendations is each government's continuing progress in meeting its remaining priority legislation review and reform obligations. Figure 1 indicates the absolute and relative extent of completed priority legislation review and reform obligations at the time of both the 2003 and 2004 NCP assessments. The hatched bars show improvements subsequent to the imposition of pool suspensions in 2003.

The compliance rate across all jurisdictions improved from around 56 per cent in 2003 to 74 per cent in 2004. The poorest performing jurisdictions generally made good progress, particularly the Australian Government and the Northern Territory. Not surprisingly, jurisdictions that achieved a high compliance rate in 2003 made relatively smaller incremental gains in 2004. (The Council's views on the intractable reform areas, such as pharmacy, are outlined in chapter 9.)

The (unweighted) data presented in figure 1 include all legislative reforms that are incomplete or that the Council has assessed as failing to meet the

Figure 1: Governments' progress with completing their priority legislation review and reform matters: 2003 and 2004



obligations set out in the Competition Principles Agreement (CPA). However, in assessing governments' progress in addressing their 2003 pool suspensions, and the implications for subsequent competition payments, the Council has afforded all governments some latitude in certain areas (see chapter 9). The rationales for providing such 'dispensation' include the following:

- Governments are not in a position to progress some areas of legislation review and reform because interjurisdictional processes (that is, national reviews and associated working groups) have yet to be concluded. As for the 2003 NCP assessment, these instances of incomplete activity did not bear adversely on payments recommendations.

- The Council accepts that some governments are not yet in a position to progress reforms in aspects of their fisheries regulation because further scientific research and industry consultation are needed. Similarly, the Council has not adopted an overly prescriptive approach to the review and reform of gambling legislation, for which social objectives are not always clearly enunciated and/or are still developing.

- Some compliance failures are unlikely to have a significant impact on competition — for example, some jurisdictions have retained the reservation of title for occupational therapists without demonstrating that this is in the public interest. However, reservation of title is a restriction with a relatively minor impact that does not preclude other health practitioners from offering identical services under other titles (such as rehabilitation therapist).

Each government's pool of noncompliant legislation reflects these mitigating circumstances. Each state and territory governments' suspension pool includes noncompliant areas 'above the line' and 'below the line' (see assessments below). Noncompliant areas 'below the line' did not bear adversely on the Council's payment recommendations for this 2004 NCP assessment. This does not mean that all such areas are afforded permanent immunity from penalty considerations. The Council will scrutinise all noncompliant areas for the 2005 NCP assessment, which will be the final assessment under the current NCP program. A summary of the Council's recommendations is contained in tables 1–3 at the end of this chapter.

New South Wales

Water

- *Appropriate environmental allocations.* Over several assessments, the Council has sought evidence that the environmental allocations in New South Wales' water sharing plans are based on the best available science and that departures from the science based levels are supported by robust socioeconomic evidence. New South Wales has provided no evidence that

its allocations to the environment provide the best possible outcomes while recognising the rights of other (existing) users of water, and it has demonstrated no intent to provide such evidence. It has, however, deferred the commencement of five of 36 water sharing plans to 1 July 2005 to re-assess allocations. Given these deferrals and the 2005 target for substantial completion of allocations, the Council recommends a specific suspension of 10 per cent of 2004–05 competition payments, for noncompliance. The suspension is recoverable once New South Wales provides evidence that it is ensuring appropriate environmental allocations in accordance with its CoAG obligation.

Legislation review

New South Wales has completed the review and reform of 83 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed 83 per cent of its priority legislation and 84 per cent of its nonpriority legislation. Compared with other jurisdictions, its performance has been above average.

- *Regulation of liquor sales*. For the 2003 NCP assessment, the Council determined that the Registered Clubs Act and the Liquor Act underpinned an anticompetitive needs test that benefited incumbent sellers of liquor. Despite having commenced a review of the legislation in 1998, the government had not completed its review and reform activity. The Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments for noncompliance.

  In February 2004, the New South Wales Government introduced legislative amendments that removed the needs test and substituted a social impact assessment (SIA). The Council has reservations about the operation of the SIA mechanism, particularly its complexity and associated compliance costs. The Council intends to monitor the operation of the new regulations in the lead-up to the 2005 NCP assessment and, in particular, to determine whether the onerous processes are to the detriment of potential smaller businesses. That said, for this 2004 NCP assessment, the Council is satisfied that New South Wales has met its CPA obligations and that no further penalty is warranted.

- *Chicken meat industry negotiations*. The Poultry Meat Industry Act restricts competition between processors and growers by setting base rates for growing fees and prohibiting agreements not approved by an industry committee. For the 2003 NCP assessment, the government failed to show that these restrictions were in the public interest and to conduct an open NCP review process. The Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments.

  In March 2004, the New South Wales Minister for Agriculture sought the Council's view on the implications for the 2005 NCP assessment if the

government finally submitted the legislation for review. The Minister and the Council agreed that if the government initiated an independent NCP review of the poultry legislation in accordance with agreed terms of reference, the Council would:

> … *recommend the application of a suspension to apply to competition payments for 2004-05, rather than another permanent deduction. Moreover, on the timely implementation of NCP compliant reforms, the Council would recommend the lifting of the suspension.* (Letter to Minister for Agriculture and Fisheries, 16 March 2004)

Subsequently, the government commissioned an independent review of the Act to be completed later in 2004. In light of the agreement, the Council recommends a specific suspension of 5 per cent of 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, timely implementation of NCP compliant reforms.

- *Monopoly on domestic rice sales*. The NCP review of the statutory rice marketing monopoly under the Marketing of Primary Products Act recommended removing the domestic monopoly while retaining the export monopoly. The government failed to implement the recommendations. To progress matters, a working group developed in 1999 a model for a federal rice export authority, which would enable liberalisation of domestic rice marketing arrangements. The New South Wales Premier agreed in principle to the model. At the time of the 2003 NCP assessment, the Australian Government was consulting with other states and territories on this matter. Accordingly, the Council considered that there should be no penalty for this outstanding matter because New South Wales was not in a position to expedite reform.

  In November 2003, the New South Wales Government extended the rice vesting arrangements until 2009. The New South Wales Minister for Agriculture and Fisheries reported that the Australian Government's consultations with other governments had been abandoned. In March 2004, the Minister wrote to the Council to confirm that the government would undertake a new review of the rice marketing arrangements to be completed in 2004. The Council and the Minister agreed, provided the government initiated an independent NCP review of its rice marketing legislation, that:

  > … *the Council will consider recommending a (recoverable) suspension or may, given the particular circumstances, monitor progress closely without recommending a suspension.* (Letter to Minister for Agriculture and Fisheries, 16 March 2004)

  Given the government's decision to extend the current arrangements to 2009, the Council considers it appropriate to recommend a specific suspension of 5 per cent of 2004–05 competition payments, recoverable on the completion of an appropriate review and, where necessary, the timely implementation of NCP compliant reforms (before 2009).

- *Suspension pool*. For the 2003 NCP assessment, the Council recommended a suspension of 10 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the New South Wales Government has made substantial progress in addressing the outstanding items. The Council recommends that the 2003-04 suspension pool funds be released in full to the government.

  The items remaining in New South Wales pool (see below) do not warrant any penalty to the state's 2004-05 competition payments.

New South Wales pool

Primary industries: stock medicines; veterinary surgeons

Transport: taxis; tow trucks

Health: pharmacy; dental technicians

Other: environmental planning and land use

National reviews outside government's control: travel agents; agricultural and veterinary chemicals; legal professions; trade measurement

Mitigation for 2004 NCP assessment: gaming machines exclusive licence

Other matters

In relation to the CPA clause 5(5) obligations, New South Wales examines new regulatory proposals for compliance with competition principles. However, the Council's experience is that the state's mechanisms for examining the impact of proposed regulations could be improved in terms of transparency and independence. In particular, the New South Wales Cabinet Office, which advises agencies on regulatory best practice, may not be sufficiently separated from the policy development process. Other jurisdictions generally have an independent gatekeeper (such as the Victorian Competition and Efficiency Commission) or locate that function in Treasury departments.

Assessment

The Council recommends the full release to New South Wales of the state's 2003-04 competition payments that were suspended for outstanding legislation review items (pool).

In relation to New South Wales' 2004-05 competition payments, the Council considers that the matters identified in this assessment warrant:

- ***a specific suspension of 10 per cent for noncompliance with water reform obligations***

- ***a specific suspension of 5 per cent for noncompliance with obligations relating to poultry meat legislation***
- ***a specific suspension of 5 per cent for noncompliance with obligations relating to rice marketing legislation.***

Victoria

Legislation review

Victoria has completed the review and reform of 85 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed 84 per cent of its priority legislation and 85 per cent of its nonpriority legislation. Victoria's performance surpassed that of all other jurisdictions in both the 2003 and 2004 NCP assessments.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 5 per cent of 2003-04 competition payments for legislation review compliance failures. The Victorian Government subsequently made good progress in addressing the outstanding items. The Council recommends that the 2003-04 suspension pool funds be released in full to the government.

  The items remaining in Victoria's pool (see below) do not warrant any penalty to the state's 2004-05 competition payments.

Victorian pool

Health: pharmacists

Other professions/occupations: legal practice (conveyancing)

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National reviews outside government's control: legal practice (SCAG); agriculture and veterinary chemicals; drugs, poisons and controlled substances; trade measurement; travel agents

Mitigation for 2004 NCP assessment: fisheries; lottery exclusive licences

Assessment

The Council recommends releasing in full to Victoria the state's 2003-04 competition payments that were suspended for outstanding legislation review items (pool).

In relation to Victoria's 2004-05 competition payments, the Council recommends that all funds be disbursed to the state.

Queensland

Energy

- *Failure to progress gas reform*. Queensland has not made progress towards extending contestability to commercial and industrial customers using 1–100 terajoules of gas per year, despite an independent study (commissioned by Queensland) finding that the benefits of extending contestability would outweigh the costs. The government's explanation for delaying an extension is that retail prices are not cost reflective.

  The 1997 gas agreement recognised that the introduction of retail contestability posed transitional issues for all jurisdictions, and made allowance for a phased process to be completed by 2001. Queensland did not meet this time frame and failed to gain the approval of all governments for an indefinite deferral.

  The Council concludes that Queensland's failure to extend contestability to customers using 1–100 terajoules of gas per year is a serious breach of its NCP gas reform commitments. The Council recommends a suspension of 5 per cent of 2004–05 competition payments pending Queensland's implementation of the findings of the cost-benefit study.

- *Failure to progress electricity reform*. In the 2003 NCP assessment, the Council determined that full retail contestability had not been introduced as required under the NCP electricity reform agreements. Queensland had agreed, however, to immediately consider introducing contestability for tranche 4A customers and undertaking the further review of introducing full retail contestability immediately. The Council recommended, and the Australian Government imposed, a suspension of 10 per cent of 2003-04 competition payments, pending implementation of contestability for tranche 4A customers and a suspension of 15 per cent of competition payments, pending the outcome of the wider review of full retail contestability.

  Since the 2003 NCP assessment, the Council is satisfied that Queensland has met its obligation to introduce contestability for tranche 4A customers — albeit on the last day of the assessment period. The Council recommends the full release to Queensland of the state's suspended 10 per cent of 2003-04 competition payments.

  To date, however, Queensland has not reviewed the introduction of full retail contestability. The Council thus recommends that the suspended 2003-04 competition payments be deducted permanently and that there be a new suspension of 15 per cent of 2004-05 competition payments, pending the completion of the review and implementation of its findings.

Legislation review

Queensland has completed the review and reform of 86 per cent of its legislation. It has reviewed and, where appropriate, reformed 83 per cent of its priority legislation and over 90 per cent of its nonpriority legislation. Compared with other jurisdictions, Queensland's overall performance has been excellent, particularly in the last 12 months.

- *Regulation of liquor sales*. For the 2003 NCP assessment, the Council determined that the Liquor Act requires sellers of packaged liquor to hold a hotel licence and provide bar facilities. It also regulates the number of bottle shops per licence (limit of three) and their configuration. The restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments.

  In response to the 2003 NCP assessment, the government indicated its intention to retain the status quo. Accordingly, the Council recommends a permanent deduction of 5 per cent of 2004–05 competition payments for continued noncompliance.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 10 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. The Queensland Government subsequently made substantial progress in addressing the outstanding items. The Council thus recommends the full release to Queensland of the state's 2003-04 suspension pool funds.

  The items remaining in Queensland's pool (see below) do not warrant any penalty to the state's 2004-05 competition payments.

Queensland pool

Transport: taxis

Health: pharmacy; nurses registration

Other professions/occupations: legal practitioners (conveyancing); auctioneers and agents

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National reviews outside government's control: drugs and poisons; legal practitioners (SCAG); travel agents; trade measurement; agricultural and veterinary chemicals

Mitigation for 2004 NCP assessment: fisheries; occupational therapists; speech pathologists; gaming machine monitoring caps

Assessment

In relation to Queensland's 2003-04 competition payments, the Council recommends:

- ***permanently deducting the payments suspended for noncompliance with obligations relating to full retail contestability for electricity consumers***
- ***releasing in full the payments suspended for noncompliance with tranche 4A electricity reforms***
- ***releasing in full the payments suspended for outstanding legislation review items (pool).***

In relation to Queensland's 2004-05 competition payments, the Council considers that the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance in the regulation of liquor sales***
- ***a specific suspension of 15 per cent for noncompliance with obligations relating to full retail contestability for electricity consumers***
- ***a specific suspension of 5 per cent for noncompliance with gas reform obligations.***

Western Australia

Energy

- *Structural electricity reforms.* Western Australia has made substantial progress in implementing electricity sector reform. However, it has failed to implement an essential aspect of the reform package recommended by the Electricity Reform Task Force and accepted by the government — namely, the structural separation of Western Power into generation, networks and retail entities. The government intends to re-introduce the disagreggation legislation following the next state election. The Council recommends a specific suspension of 15 per cent of 2004–05 competition payments, pending the passage of legislation to disaggregate Western power. The Council notes that the recommended suspension would have been significantly larger if not for the government's strong performance in other aspects of electricity reform.

Water

- *Transparency in water pricing*. In the 2003 NCP assessment, the Council recommended, and the Australian Government imposed, a suspension of 10 per cent of 2003–04 competition payments for the state's lack of transparency, which raised questions about whether water pricing principles had been met. The suspension was conditional on Western Australia establishing the Economic Regulation Authority and announcing terms of reference for an investigation by the authority of water and wastewater pricing against the CoAG pricing principles. Given that Western Australia met these conditions, the Council recommends the full release to Western Australia of its suspended 2003-04 funds.

Legislation review

Western Australia has completed the review and reform of 62 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed 46 per cent of its priority legislation and 73 per cent of its nonpriority legislation. Western Australia's performance was well below that of all other jurisdictions in both the 2003 and 2004 NCP assessments.

- *Regulation of retail trading hours*. Under the Retail Trading Hours Act, Western Australia is the only jurisdiction to heavily restrict weekday trading hours and to prohibit large retailers from opening on Sundays (outside of tourist precincts). In the 2003 NCP assessment, the Council recommended, and the Australian Government imposed, a permanent deduction of 10 per cent of 2003–04 competition payments. This reflected the Council's assessment that the government's decision to not extend trading hours before mid-2005 did not accord with CoAG's direction that an appropriate transitional reform program must be underpinned by a robust public interest case.

  Since the 2003 NCP assessment, the government has retreated from its position to reform these anticompetitive arrangements by mid-2005. Accordingly, the Council recommends a permanent deduction of 10 per cent of 2004–05 competition payments, for continued noncompliance.

- *Regulation of liquor sales*. The Liquor Licensing Act contains a needs test, whereby a licence application can be rejected because there are incumbent liquor outlets in the area. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. For the 2003 NCP assessment, the Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments. This recommendation was based on the Council's assessment that the government's announcement that reforms would not take effect before mid-2005 did not accord with CoAG's direction that an appropriate transitional reform program must be underpinned by a robust public interest case.

Recently, the government announced that it would not proceed with the proposed reforms because it considered that they would not be passed by the Legislative Council. Instead, the government is undertaking a review of the legislation. Accordingly, the Council recommends a permanent deduction of 5 per cent of 2004–05 competition payments, for continued noncompliance.

- *Potato marketing*. Western Australia is the only jurisdiction to regulate potato marketing. The Marketing of Potatoes Act empowers the Potato Marketing Corporation to restrict the availability of land for growing potatoes for fresh consumption and to fix the wholesale price of such potatoes. At the time of the 2003 NCP assessment, the Government announced that the restrictions would be retained in the public interest. The Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments. This was based on the Council's assessment that neither the outcomes of the NCP review nor the government's stated arguments for retaining the arrangements were consistent with NCP obligations.

  In the lead-up to this 2004 NCP assessment, the government announced that it would amend the Act to, among other things, change the basis of supply restrictions from growing area to quantity and introduce incentives for growers to supply varieties preferred by consumers. When implemented, these changes are likely to reduce the costs of the marketing arrangements. To meet its obligations, however, the government must remove the supply and marketing controls. The Council recommends a permanent deduction of 5 per cent of 2004–05 competition payments, for continued noncompliance.

- *Egg marketing*. Western Australia is the only jurisdiction to retain egg marketing regulation. The Marketing of Eggs Act restricts supply through licences and production quotas, and prohibits supply other than to the Egg Marketing Board. At the time of the 2003 NCP assessment, the government had announced that the restrictions would be removed no later than 2007. To expedite this process, the Council recommended, and the Australian Government imposed, a suspension of 5 per cent of 2003-04 competition payments, pending the commencement of an appropriate reform implementation program.

  In response, the government passed legislation in August 2004 for the dissolution of the board on or before 31 December 2005, and the transfer of the board's assets to a producer owned co-operative company. (The government allocated $8.75 million to assist egg producers to adjust to the removal of egg supply licensing and quotas.) The Council recommends the full release to Western Australia of the state's suspended 2003-04 funds.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 20 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the Western Australian Government has made relatively poor progress in addressing the outstanding items. The Council recommends that only one

quarter (5 percentage points) of the suspension pool funds be released to the state, with the remaining three quarters (15 percentage points) deducted permanently.

The items remaining in Western Australia's suspension pool (see below) warrant suspending 15 per cent of the state's 2004-05 competition payments. In particular, the Council recommends that 5 percentage points of the suspension attach specifically to the state's failure to complete its general health practitioner reforms, despite repeated undertakings that this would occur by 30 June 2004.

Western Australian pool

Primary industries: agricultural produce (chemical residues); aerial spraying controls; veterinary preparations; grain marketing; food regulation; veterinary surgeons; pearling

Transport: navigation and shipping legislation; air transport

Health: pharmacy

Health practitioner legislation: dentists and dental prosthetists; chiropractors; optical dispensers and optometrists; nurses; osteopaths; physiotherapists; podiatrists; psychologists; occupational therapists; medical practitioners

Other professions/occupations: auction sales; settlement agents; pawnbrokers and second-hand dealers; debt collectors; employment agents; hairdressers; real estate and business agents; architects

Water legislation: Western Australia is the only jurisdiction to have not met its obligations on water industry legislation (see volume 2).

Other: petroleum products pricing; retirement villages; credit legislation; town planning and development; building regulations

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National reviews outside government's control: travel agents; legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

Mitigation for 2004 NCP assessment: fisheries; gaming exclusive licences; minor gambling; casinos and betting; totalisator exclusive licence; racing minimum bets

Other matters

Western Australia does not expose some government sectors/businesses to competitive neutrality until they have been subject to a broad 'coverage review'. (This means its complaints mechanism cannot operate until the initial coverage review has occurred.) Western Australia has not required businesses operated by public hospitals, for example, to apply competitive neutrality principles.

Western Australia also has not yet met its NCP road transport reform obligations. It has to implement two elements of the reform program relating to driver licensing requirements.

Assessment

In relation to Western Australia's 2003-04 competition payments, the Council recommends:

- ***releasing in full the suspended payments relating to transparency in water pricing***
- ***releasing in full the suspended payments relating to egg marketing***
- ***releasing one quarter (5 percentage points) of 2003-04 competition payments suspended for outstanding legislation review items (pool) and deducting the remainder permanently.***

In relation to Western Australia's 2004-05 competition payments, the Council considers that the matters identified in this assessment warrant:

- ***a permanent deduction of 10 per cent for noncompliance relating to retail trading hours legislation***
- ***a permanent deduction of 5 per cent for noncompliance relating to the regulation of liquor sales***
- ***a permanent deduction of 5 per cent for noncompliance relating to the marketing of potatoes***
- ***a specific suspension of 15 per cent for noncompliance with obligations relating to electricity structural separation***
- ***a pool suspension of 15 per cent for outstanding legislation review items (of which 5 percentage points relate directly to the lack of progress in health practitioner reforms).***

South Australia

Legislation review

South Australia has completed the review and reform of 77 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed 60 per cent of its priority legislation and 90 per cent of its nonpriority legislation. Compared with other jurisdictions, South Australia's performance has been below average.

- *Chicken meat industry negotiations*. For the 2003 NCP assessment, the Council determined that the Chicken Meat Industry Act provided for

compulsory arbitration in negotiating disputes on terms and conditions, and for non renewal of contracts. The Council considered that the legislation had implications for other states and could affect the distribution of chicken growing and processing activities. It recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments, for noncompliance in this area.

Following the 2003 NCP assessment, the South Australian Government amended the Act by removing:

- compulsory arbitration of collective bargaining disputes, but introducing compulsory mediation
- compulsory mediation and arbitration of nonrenewal disputes for growers who were not party to a collectively negotiated growing agreement when the amendment commenced.

The Council assesses that South Australia has met its obligations and that no further penalty is warranted.

- *Barley marketing*. Two reviews of the Barley Marketing Act failed to produce credible public interest evidence to maintain the monopoly arrangements. For the 2003 NCP assessment, the Council recommended, and the Australian Government imposed, a suspension of 5 per cent of 2003–04 competition payments until South Australia provided details of a complying reform implementation program.

  Following the imposition of the suspended penalty, the government made a concerted effort to introduce a reform package in the public interest. However, the legislation did not have sufficient support to pass through Parliament. Accordingly, the Council recommends that the suspended 5 per cent of 2003-04 competition payments be deducted permanently. It considers that the experience of the deregulated market in Victoria and the partly deregulated arrangements in Western Australia continue to demonstrate benefits to growers and the community from allowing contestability. Given the evidence of the benefits of reform (and the lack of evidence of any detriment from reform), the Council recommends a further suspension of 5 per cent of 2004–05 competition payments until South Australia institutes a complying reform implementation program.

- *Regulation of liquor sales*. South Australia's Liquor Licensing Act contains a needs test whereby the licensing authority can reject a licence application because there are already liquor outlets in the area. For the 2003 NCP assessment, the Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments, for noncompliance.

  In the lead-up to this 2004 NCP assessment, the government made no progress in this area. The Council thus recommends a permanent deduction of 5 per cent of 2004–05 competition payments, for continued noncompliance.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 15 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the South Australian Government has made only modest progress in addressing the outstanding items. The Council thus recommends releasing to South Australia only one third (5 percentage points) of the suspension pool funds and permanently deducting two thirds (10 percentage points).

  The items remaining in South Australia's suspension pool (see below) warrant suspending 10 per cent of the state's 2004-05 competition payments. In this regard, the Council recommends that 5 percentage points of the suspension attach specifically to the state's failure to complete reform of its health practitioner legislation.

South Australian pool

Primary industries: fisheries; opal mining

Transport: taxis; tow trucks

Health: pharmacy

Health practitioner legislation: chiropractors; medical practitioners; optometrists; physiotherapists; psychological practices; chiropodists

Other professions/occupations: employment agents; architects

Retail trading: shop trading hours; petroleum products regulation

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National reviews outside government's control: travel agents; legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

Mitigation for 2004 NCP assessment: lotteries exclusive licence; gaming machines; dentists; occupational therapists

Assessment

In relation to South Australia's 2003-04 competition payments, the Council recommends:

- ***permanently deducting the payments suspended for noncompliance with obligations relating to barley marketing***

- ***releasing one third (5 percentage points) of 2003-04 competition payments suspended for outstanding legislation review items (pool) and permanently deducting the remainder.***

In relation to South Australia's 2004-05 competition payments, the Council considers that the matters identified in this assessment warrant:

- ***a permanent deduction of 5 per cent for noncompliance with obligations in relation to the regulation of liquor sales***

- ***a specific suspension of 5 per cent for noncompliance with obligations in relation to barley marketing arrangements***
- ***a pool suspension of 10 per cent for outstanding legislation review items (of which 5 percentage points relate directly to the lack of progress with health practitioner reforms).***

Tasmania

Legislation review

Tasmania has completed the review and reform of 89 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed 82 per cent of its priority legislation and 95 per cent of its nonpriority legislation. In this regard, compared to other jurisdictions, Tasmania's performance has been excellent.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 5 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the Tasmanian Government has continued its sound progress in addressing the outstanding items. The Council recommends the full release to Tasmania of the state's 2003-04 suspension pool funds.

  The items remaining in Tasmania's pool (see below) do not warrant any penalty to its 2004-05 competition payments.

Tasmanian pool

Health: pharmacy

Other professions/occupations: auctioneers and estate agents; plumbers and gas-fitters

National reviews outside government's control: travel agents; legal practitioners; drugs and poisons; agricultural and veterinary chemicals

Mitigation for 2004 NCP assessment: racing; gaming machines exclusive licences

Assessment

The Council recommends releasing in full to Tasmania the state's 2003-04 competition payments suspended for outstanding legislation review items (pool).

In relation to Tasmania's 2004-05 competition payments, the Council recommends disbursing all funds to the state.

The ACT

Legislation review

The ACT has completed the review and reform of 93 per cent of its stock of legislation. The ACT has reviewed and, where appropriate, reformed 81 per cent of its priority legislation and 98 per cent of its nonpriority legislation. Compared with other jurisdictions, the ACT's performance has been above average.

- *Suspension pool.* For the 2003 NCP assessment, the Council recommended a suspension of 10 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the ACT Government has made very good progress in addressing the outstanding items. The Council recommends the full release to the ACT of the territory's 2003-04 suspension pool funds.

  The items remaining in the ACT's suspension pool (see below) do not warrant a penalty to the territory's 2004-05 competition payments.

ACT pool

Primary industries: veterinary surgeons

Transport: taxis

Health: pharmacy; dental technicians and prosthetists

Other professions/occupations: employment agents

National reviews outside government's control: travel agents; drugs and poisons; legal practitioners; trade measurement

Mitigation for 2004 NCP assessment: betting exclusive licence; gaming machine exclusivity; interactive gambling; public sector superannuation

Other matters

The ACT has not yet met its NCP road transport reform obligations relating to continuous heavy vehicle registration. The Legislative Assembly rejected Regulations implementing the obligation. However, the government is considering alternative means of enforcing timely renewals of registration.

The Australian Competition and Consumer Commission reported that the ACT's *Health Amendment Act 2003* had introduced an exception to the *Trade Practices Act 1974* in the *Health Act 1993*. The ACT did not notify the commission of the exception as required under the ACT's conduct code obligations.

Assessment

The Council recommends releasing in full to the ACT its 2003-04 competition payments suspended for outstanding legislation review items (pool).

In relation to the ACT's 2004-05 competition payments, the Council recommends disbursing all funds to the territory.

The Northern Territory

Legislation review

The Northern Territory has completed the review and reform of 83 per cent of its stock of legislation. It has reviewed, and where appropriate, reformed 79 per cent of its priority legislation and 90 per cent of its nonpriority legislation. The Northern Territory's performance was well below average at the time of the 2003 NCP assessment, but it has made good progress in the past 12 months.

- *Regulation of liquor sales*. At the time of the 2003 NCP assessment, the Northern Territory's Liquor Act contained a needs test whereby a licence application could be rejected if existing sellers could meet consumer needs. The legislation further discriminated between hotels and liquor stores, with only hotels able to trade on Sundays. The Council recommended, and the Australian Government imposed, a permanent deduction of 5 per cent of 2003–04 competition payments, for noncompliance.

  The Northern Territory has demonstrated substantial progress in this area since the 2003 NCP assessment, particularly by removing the anticompetitive needs test. However, it rejected the recommendation of its review and retained the provisions that discriminate between sellers. It did not provide a convincing public interest case for this course of action. The Council thus recommends a permanent deduction of 5 per cent of 2004-05 competition payments, for continued noncompliance.

- *Suspension pool*. For the 2003 NCP assessment, the Council recommended a suspension of 15 per cent of 2003-04 competition payments, for remaining legislation review compliance failures. Since that assessment, the Northern Territory Government has made excellent progress in addressing the outstanding items. The Council thus recommends releasing in full to the Northern Territory the 2003-04 suspension pool funds.

  The items remaining in the territory's suspension pool (see below) do not warrant a penalty to its 2004-05 competition payments.

Northern Territory pool

Transport: taxis

Health: pharmacy

Other: community welfare

National reviews outside government's control: travel agents; agricultural and veterinary chemicals; legal practitioners; drugs and poisons; trade measurement

Mitigation for 2004 NCP assessment: fisheries; totalisator exclusivity; occupational therapists

Assessment

The Council recommends releasing in full to the Northern Territory its 2003-04 competition payments suspended for outstanding legislation review items (pool).

In relation to the Northern Territory's 2004-05 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance with obligations in relation to the regulation of liquor sales.

Australian Government

Legislation review

The Australian Government has completed the review and reform of 70 per cent of its stock of legislation. It has reviewed and, where appropriate, reformed around 60 per cent of its priority legislation and 77 per cent of its nonpriority legislation. Compared with other jurisdictions, its performance has been below average, second poorest only to Western Australia.

Moreover, given the scope, coverage and importance of the Australian Government's legislation, reform failures can have significant adverse community impacts.

- *Export marketing for wheat*. The review of the Wheat Marketing Act recommended reducing restrictions on wheat exports, while retaining the Australian Wheat Board's operations. The government did not accept the recommendations designed to reduce restrictions on exports. The review did not show that retaining the wheat export single desk is in the public interest; rather, it found that allowing competition is more likely to be of net benefit to the community. The wheat export single desk is under review, but this is not an NCP review and is not considering the continuation of the single desk.

- *Broadcasting legislation*. The government has not addressed the benefits and costs to the community from the significant restrictions in broadcasting, or whether the objectives could be achieved without these restrictions.

- *Competition in postal services*. The government is yet to address the major restrictions in its postal regulation that relate to the monopoly accorded to Australia Post in the delivery of domestic business and incoming international mail.

- *Industry assistance*. A review of assistance arrangements for the textile, clothing and footwear arrangements has been completed, but complying amending legislation has not been passed.

- *Other legislation review compliance failures*

  – Primary industries: agricultural and veterinary chemicals; plant and animal quarantine; export controls for food and wood; Aboriginal land rights (mining)

  – Transport: shipping registration; navigation

  – Health: pathology collection centre licensing; restrictions on services covered by private health insurance; drugs and poisons

  – Other: anti-dumping legislation; interactive gambling

Other matters

The Australian Government has not met its CPA clause 4 obligations in relation to Telstra and is still to implement one remaining component of its national road transport reform agenda relating to heavy vehicle registration. The government has delayed this latter reform, pending a review of the Federal Interstate Registration Scheme.

Assessment

The Australian Government does not receive competition payments. The Council considers, nonetheless, that the Australian Government's performance in the review and reform of its legislation is poor. This unsatisfactory outcome is unfortunate given the government's role in deciding on the Council's payment recommendations for the states and territories.

Table 1: Council's recommendations on 2004-05 competition payments and suspended 2003-04 competition payments[ab]

	Penalties imposed by Australian Government for 2003-04 payments	*Council's recommendations for suspended 2003-04 payments*	*Council's recommendations for 2004-05 payments*
New South Wales			
Water reform obligations	—	—	10% suspension ($26m)
Rice marketing legislation	—	—	5% suspension ($13m)
Chicken meat industry legislation	5% permanent deduction ($12.7m)	—	5% suspension ($13m)
Regulation of liquor sales	5% permanent deduction ($12.7m)	—	—
Outstanding legislation review items	10% pool suspension ($25.4m)	Release full amount	—
Victoria			
Pool suspension	5% suspension ($9.4m)	Release full amount	—
Queensland			
Full retail contestability gas reforms	—	—	5% suspension ($7.6m)
Regulation of liquor sales	5% permanent deduction ($7.3m)	—	5% permanent deduction ($7.6m)
Tranche 4A electricity reforms	10% suspension ($14.6m)	Release full amount	—
Full retail contestability electricity reforms	15% suspension ($21.9m)	Permanently deduct funds	15% suspension ($22.7m)
Outstanding legislation review items	10% pool suspension ($14.6m)	Release full amount	—
Western Australia			
Structural electricity reforms	—	—	15% suspension ($11.5m)
Retail trading hours regulation	10% permanent deduction ($7.5m)	—	10% permanent deduction ($7.7m)
Regulation of liquor sales	5% permanent deduction ($3.7m)	—	5% permanent deduction ($3.8m)
Regulation of potato marketing	5% permanent deduction ($3.7m)	—	5% permanent deduction ($3.8m)
Lack of transparency in water pricing	10% suspension ($7.5m)	Release full amount	—
Regulation of egg marketing	5% suspension ($3.7m)	Release full amount	—
Outstanding legislation review items	20% pool suspension ($14.9m)	Release 5 percentage points ($3.7m) and permanently deduct 15 percentage points ($11.2m)	15% pool suspension ($11.5m)

(*continued*)

Table 1 continued

	Penalties imposed by Australian Government for 2003-04 payments	*Council's recommendations for suspended 2003-04 payments*	*Council's recommendations for 2004-05 payments*
South Australia			
Chicken meat industry legislation	5% permanent deduction ($2.9m)	—	—
Regulation of liquor sales	5% permanent deduction ($2.9m)	—	5% permanent deduction ($3.0m)
Barley marketing arrangements	5% suspension ($2.9m)	Permanently deduct funds	5% suspension ($3.0m)
Outstanding legislation review items	15% pool suspension ($8.7m)	Release 5 percentage points ($2.9m) and permanently deduct 10 percentage points ($5.8m)	10% pool suspension ($5.9m)
Tasmania			
Outstanding legislation review items	5% pool suspension ($0.9m)	Release full amount	—
ACT			
Outstanding legislation review items	10% pool suspension ($1.2m)	Release full amount	—
Northern Territory			
Regulation of liquor sales	5% permanent deduction ($0.4m)	—	5% deduction ($0.4m)
Outstanding legislation review items	15% pool suspension ($1.1m)	Release full amount	—

[a] In response to the Council's recommendations in its 2003 NCP assessment, the Australian Government applied a range of penalties to governments' 2003-04 competition payments. The penalties included permanent (irrevocable) deductions and suspensions of payments. In this 2004 NCP assessment, the Council has provided recommendations on whether some or all of the suspended 2003-04 payments should be released to governments, in addition to recommendations on any penalties to apply to governments' 2004-05 competition payments.

[b] All dollar estimates in the table, including those relating to 2003-04 competition payments, are subject to minor revision to reflect changes in population and inflation.

Table 2: Summary of recommended final outcomes for 2003-04 competition payments ($ million)[a]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
2003-04 competition payments allocation	$254.4	$188.1	$146	$74.6	$58.1	$18.1	$12.2	$7.4
Permanent deductions	$25.4	0	$7.3	$14.9	$5.8	0	0	$0.4
Recommended conversion of suspensions to deductions	0	0	$21.9	$11.2	$8.7	0	0	0
Recommended total payments received	$229.0 (90%)	$188.1 (100%)	$116.8 (80%)	$48.5 (65%)	$43.6 (75%)	$18.1 (100%)	$12.2 (100%)	$7.0m (95%)

[a] All dollar estimates in the table are subject to minor revision to reflect changes in population and inflation.

Table 3: Summary of recommendations for estimated 2004-05 competition payments ($ million)[a]

	NSW	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*ACT*	*NT*
2004-05 competition payments allocation (est.)	$259.8	$191.8	$151.4	$76.6	$59.2	$18.8	$12.4	$7.7
Permanent deductions	0	0	$7.6	$15.3	$3.0	0	0	$0.4
Suspensions	$52.0	0	$30.3	$23.0	$8.9	0	0	0
Total deductions/suspensions	$52.0	0	$37.9	$38.3	$11.9	0	0	$0.4
Potential allocation (if all obligations are met)	100%	100%	95%	80%	95%	100%	100%	95%

[a] Estimates are subject to revision pending release of updated inflation and population growth data.

1 The National Competition Policy and related reforms

The National Competition Policy agreements

The National Competition Policy (NCP) agreements of April 1995 — the Competition Principles Agreement (CPA), the Conduct Code Agreement and the Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement) — establish the program of NCP and related reforms. These agreements are augmented by sector-specific intergovernmental agreements on four related areas of reforms: electricity, gas, water resource policy and road transport (NCC 1998a). To meet obligations for the 2004 NCP assessment, governments must have:

- become a party to the CPA and consequently:
  - applied competitive neutrality principles to significant government-owned businesses where appropriate (CPA clause 3) — chapter 2
  - undertaken structural reform of public monopolies where competition is to be introduced or before a monopoly is privatised (CPA clause 4) — chapter 3
  - undertaken a regulatory impact analysis of proposed legislation or legislative amendments that would restrict competition (CPA clause 5) — chapter 4
- become a party to the Conduct Code Agreement, implemented the Competition Code and ensured national standards are set in accord with the principles and guidelines for good regulatory practice as endorsed by the Council of Australian Governments (CoAG) (as per the Implementation Agreement) — chapter 5
- achieved (if a relevant jurisdiction) effective participation in the fully competitive national electricity market — chapter 6
- implemented (if relevant) free and fair trading in gas across and within jurisdictions — chapter 7
- implemented the road transport reforms developed by the Australian Transport Council and endorsed by CoAG — chapter 8

- achieved satisfactory progress in implementing the 1994 CoAG strategic framework for the reform of the water industry, consistent with established timeframes — volume 2.

In addition, the CPA obliged governments to review all legislation identified in 1996 as restricting competition and, where appropriate, remove the restrictions. CoAG specified 30 June 2002 as the completion date for this element of the NCP. However, at the time of 2003 NCP assessment, all governments had outstanding obligations — and thus NCP compliance failures — for this program. The National Competition Council's approach to these outstanding matters is discussed in chapter 9. Subsequent chapters detail governments' progress with specific areas of noncompliance.

The CPA also commits governments to consider establishing independent prices oversight arrangements for government business enterprises that have the potential to engage in monopolistic pricing behaviour. Such oversight arrangements operate in all states and territories.

Governments' National Competition Policy annual reports

The CPA obliges all governments to produce annual reports on their progress in meeting NCP obligations. Table 1.1 sets out the dates when governments made their reports available to the Council.

Table 1.1: Governments' provision of 2004 NCP annual reports

Government	*Date on which Council received 2004 annual report*[a]
Australian Government	6 May 2004
New South Wales	19 April 2004
Victoria	8 April 2004
Queensland	15 April 2004
Western Australia	5 May 2004
South Australia	22 June 2004
Tasmania	26 April 2004
Australian Capital Territory	12 May 2004
Northern Territory	1 June 2004

[a] To assist the Council, some governments made their reports available initially in draft form.

National Competition Policy payments

Under the Implementation Agreement, the Australian Government agreed to make NCP payments to the states and territories as a financial incentive to implement the NCP and related reforms. The payments recognise that while the states and territories have responsibility for significant elements of the NCP, the Australian Government accrues (through the taxation system) a financial dividend from the economic growth arising from the NCP reforms. The payments are a means, therefore, of distributing across the community the gains that arise from NCP reform.

The Council assesses governments' progress against the NCP obligations and makes recommendations to the Australian Government Treasurer on the distribution of NCP payments. The prerequisite for states and territories to receive NCP payments is satisfactory progress against the NCP obligations — that is, if governments do not implement the agreed reforms, then there are no reform dividends to share. The Council may recommend that the Australian Government Treasurer reduce or suspend the NCP payments otherwise available to a state or territory if that state or territory has not invested in the reform program in the public interest.

The Council's primary objective, however, is to assist governments to achieve reform outcomes that are consistent with the interests of the community. Consequently, since the inception of the NCP, the Council has recommended the suspension or reduction of NCP payments only as a last resort. For the 2003 NCP assessment, however, the Council was required to assess whether governments had met their agreed obligation to conclude the legislation review and reform program at 30 June 2002. No government had met this obligation, so the Council had to recommend the most comprehensive suite of penalties since the commencement of the NCP. This 2004 NCP assessment has considered governments' progress in the outstanding areas of noncompliance.

CoAG (2000) asked the Council, when assessing the nature and level of a payment reduction or suspension recommended for a particular state or territory, to account for:

- the jurisdiction's overall commitment to the implementation of the NCP
- the effect of one jurisdiction's reform efforts on other jurisdictions
- the impact of the jurisdiction's failure to undertake a particular reform.

The Council interprets CoAG's guidance to mean that individual minor breaches of reform obligations should not necessarily have adverse payment implications if the responsible government has generally performed well against the total NCP program. Nevertheless, a single breach of obligations in an important area of reform may be the subject of an adverse

recommendation, especially if the breach has a large impact on another jurisdiction.

The Council's advice in this 2004 NCP assessment informs the Australian Government Treasurer's decisions on the distribution of NCP payments in 2004-05. Approximately $778 million is available in 2004-05, on the basis that the states and territories meet their reform obligations. This amount will be distributed among the states and territories on a per person basis, as shown in table 1.2. The Council also assesses the Australian Government's progress in implementing the NCP program, although the Australian Government does not receive NCP payments.

Table 1.2: Estimated maximum NCP payments for 2004-05[a]

Government	*NCP payments in 2004-05 ($m)*
New South Wales	259.8
Victoria	191.8
Queensland	151.4
Western Australia	76.6
South Australia	59.2
Tasmania	18.8
ACT	12.4
Northern Territory	7.7
Total	777.7

[a] Estimates are revised as new inflation and population growth rates are released.

Source: Australian Government 2004

2 Competitive neutrality

Competitive neutrality policy aims to eliminate resource allocation distortions by ensuring government businesses do not enjoy any competitive advantages over private companies as a result of their public ownership. Clause 3 of the Competition Principles Agreement (CPA) sets down governments' competitive neutrality obligations, requiring governments to:

- impose on government business enterprises full Australian Government, state and territory taxes, debt guarantee fees and regulations equivalent to those faced by private sector businesses, and corporatise these enterprises 'where appropriate'

- implement the same measures for other 'significant' government business activities or ensure the prices that those activities charge for goods and services account for tax or tax equivalents, debt guarantee fees and equivalent regulations, and reflect full cost attribution.

Each government is free to determine its own agenda for implementing competitive neutrality principles and is required to implement the principles only to the extent that the benefits are expected to exceed the costs. Clause 7 of the CPA requires governments to apply competitive neutrality principles to local government business activities.

The Council of Australian Governments (CoAG) refined aspects of competitive neutrality at its November 2000 meeting. It agreed that:

- the National Competition Council's assessment of governments' application of competitive neutrality to government businesses over which they have no executive control (such as universities) should be based on a 'best endeavours' approach

- the term 'full cost attribution' could cover a range of methods, including fully distributed cost, marginal cost and avoidable cost

- governments are not required to establish a competitive process for their delivery of community service obligations (CSOs)

- governments are free to determine who should receive a CSO payment or subsidy, but such payments should be transparent, appropriately costed and budget funded.

Governments' application of competitive neutrality yields a range of benefits (box 2.1).

Box 2.1: Why governments apply competitive neutrality policies

The application of competitive neutrality principles allows resources to flow to efficient government and private businesses as a result of merit rather than any artificial advantage from public ownership.

By placing government business activities on a similar competitive footing to that of their actual or potential private competitors, competitive neutrality establishes conditions for increased private sector participation in industries, thus promoting competition with flow-on benefits to consumers. Competitive neutrality also promotes a more dynamic culture within government businesses, partly as a result of the stronger discipline for transparency and accountability. Government businesses cannot rely on the advantages of public ownership, which often encourage complacency and reduce incentives to improve performance. The application of competitive neutrality principles thus contributes to greater efficiency, better services and cost-reflective prices for users. In this way, competitive neutrality underpins and complements the performance monitoring regimes that many governments have introduced for their businesses in recent years.

With a competitive neutrality policy in place, governments can better assess the future of their businesses. Full attribution of costs, for example, often leads governments to reassess whether they wish to provide a good or service directly through a government business, allow competitive bidding for the provision of the good or service, or withdraw from the market.

In a similar manner, competitive neutrality can assist governments to address issues surrounding the provision of community service obligations (CSOs). Full cost attribution and greater transparency provide better quality information to governments, which can thus make more informed decisions about whether to fund a CSO directly (thus removing a competitive disadvantage faced by the government entity) or consider its competitive provision.

Governments' obligations

The Council assesses each government's compliance with its competitive neutrality obligations by accounting for:

- the government's application of competitive neutrality principles to all government business enterprises and significant government business activities (including local government businesses) to the extent that the benefits outweigh the costs

- the government's use of effective processes for investigating and acting on complaints that significant government business activities are not applying appropriate competitive neutrality arrangements.

Competitive neutrality coverage

The competitive neutrality policies that different jurisdictions have adopted reflect the degree of discretion provided by the CPA. Governments have adopted various criteria for establishing the significance of a government business, for example, including its absolute size and perceived impact on the market.

The 2003 NCP assessment summarised each jurisdiction's approach to applying competitive neutrality principles.[1] In some jurisdictions (Victoria, Queensland, Western Australia and South Australia), competitive neutrality policies and/or coverage has changed since the 2003 NCP assessment. The Australian Government and Tasmania have issued updated competitive neutrality guidelines for agency and government business managers, and the ACT intends to do this too during 2004. These developments are discussed below.

Australian Government

The Treasury and the Department of Finance and Administration issued new competitive neutrality guidelines for managers in February 2004. While the Australian Government's competitive neutrality policy has not changed since 1996, the revised guidelines improve clarity and help government entities implement the policy. The revised guidelines provide examples of good practice by some agencies, draw on the experience of the Australian Government Competitive Neutrality Complaints Office, and reflect changes to the government's overall financial and governance framework.

Victoria

In May 2003 the Victorian Treasurer approved a change in interpretation of the competitive neutrality policy in relation to leisure centres owned by local councils. The aquatic facilities within these centres often offer swim classes and recreational swimming. Under the new interpretation, only the first component is considered a business activity, while the recreational component is now viewed as a public amenity to which competitive neutrality does not apply.

The Victorian Government commenced its annual review of local council compliance with competitive neutrality policy in November 2003. Local councils receive 9 per cent of the state's competition payments. In December 2003 the assessment panel announced that all councils complied with state's competitive neutrality policy and were eligible for competition payments. However, payment to nine councils was made provisional on them undertaking training by Victoria's Competitive Neutrality Unit (CNU). Relevant officers within the nine councils have received training, thereby satisfying the eligibility requirement for each council to receive competition payments.

As part of Victoria's educational focus to enhance local government understanding of competitive neutrality policy, the CNU conducted a series of

[1] More detailed information on jurisdictions' competitive neutrality policies can be found in Trembath (2002).

competitive neutrality workshops in October 2003, which were attended by 46 of Victoria's 79 councils.

In October 2003 the Victorian Government established VicForests as a state business corporation under the *State Owned Enterprises Act 1992*. VicForests took over the operations of Forestry Victoria, which had been a division of the Department of Sustainability and Environment. According to the government, VicForests will be required to implement an open and competitive sales system for timber and earn an appropriate return to government. This requirement, combined with VicForests' obligation to report separately to Parliament on its financial and operational performance, will facilitate the implementation of competitively neutral pricing and enable greater transparency and accountability of the government's commercial timber harvesting management activities.

On 1 July 2004, the Competitive Neutrality Unit was absorbed into a new independent statutory authority, the Victorian Competition and Efficiency Commission (VCEC).

Queensland

Queensland completed its extension of competitive neutrality to its 15 TAFE institutes, with full cost pricing now applied to their competitive purchasing and fee-for-service activities. It has continued to encourage local governments (by offering incentive payments, for example) to apply competitive neutrality principles to their business activities, of which there are many. The government reported that the largest 18 local governments, which account for more than 80 per cent of local government business activity, made good progress in extending competitive neutrality principles to their significant and smaller business activities. In the past year the government has focused on smaller local governments. The following outcomes summarise overall progress across all local governments:

- All nine very large businesses ('type 1 businesses') have implemented full cost pricing and eight have been commercialised. Commercialisation requires council businesses to operate separately from the parent council, to make various accounting separations and to include tax equivalents in costs.

- Of the 22 medium size 'type 2 businesses', 16 have implemented all elements of full cost pricing and six have implemented most of the elements. Nineteen have been commercialised.

- More than half of the 630 small businesses of local councils have applied all or most elements of full cost pricing.

In addition, in July 2004 the Queensland Government announced that it would examine whether to establish a forestry corporation under the *Government Owned Corporations Act 1993* to manage commercial timber

production from the state's timber plantations. This business activity is currently constituted as a commercialised business group of the Department of Primary Industries and Fisheries known as DPI Forestry. A corporatisation charter preparation committee is consulting stakeholders and is to report to Cabinet in February 2005. In relation to the liability of DPI Forestry for local government rates, the Queensland Government has advised that a significant proportion of its public plantation estate is leased for grazing, with lessees liable for local government rates, and that DPI Forestry is increasingly renting rather than purchasing land to expand its plantations. Nevertheless DPI Forestry continues not to pay rates, directly or indirectly, on the existing owned plantation estate not subject to grazing leases. The Council looks forward to further progress by Queensland on this matter through its consideration of whether to corporatise DPI Forestry.

Western Australia

The Western Australian Parliament proclaimed legislation in April 2004 that introduced competitive neutrality amendments to various Acts.

- The Gold Corporation will now pay tax equivalents and a fee for its government guarantee on liabilities.
- The Western Australian Mint no longer enjoys a statutory exemption from rates and taxes.
- The Eastern Goldfields Transport Board will no longer be exempt from certain taxes and rates. (However, the government is yet to address a complaint by a competitor of the board in charter transport services. More information on this complaint is provided below.)
- The State Supply Commission will be required to pay state charges and taxes on behalf of government agencies making property transactions. (The agencies were previously exempt from such charges.)

The government also proposes to introduce legislation to Parliament that will clarify the powers of universities to engage in commercial activities. In the meantime, it has required universities to adopt competitive neutrality principles for their commercial operations and to be subject to Western Australia's complaints process.

South Australia

In May 2003 South Australia released an updated list of significant government business activities subject to competitive neutrality. Departments conduct regular reviews of agencies to assess whether they should be added to the list.

Tasmania

Tasmania has reviewed its 1996 policy statement on the application of NCP to local government and released a revised statement in April 2004 (DTF 2004a). The Tasmanian Government also released a related document to guide local governments on the definition of significant business activities for the purposes of competitive neutrality (DTF 2004b). These two policy documents are more comprehensive than the 1996 releases and provide up-to-date information — for example, information on the role of the Government Prices Oversight Commission in hearing competitive neutrality complaints. The documents guide local governments on competitive neutrality compliance matters, including the identification of full cost attribution by, and corporatisation of (where justified by a public benefit test) significant business activities. The documents also provide details on the Government Prices Oversight Commission's complaints investigation processes.

In addition, from 2004-05 Forestry Tasmania will be subject to local government rates on all land used for commercial purposes (as distinct from forest reserves), including plantation and production forests.

The ACT

The ACT is preparing detailed guidelines for government agencies on aspects of competitive neutrality policy, including the application of tax equivalents to, and full cost attribution by, government businesses. The government expects to issue these guidelines (which will augment its 1996 competitive neutrality statement) in the second half of 2004.

Assessment of coverage

The Council considers that the potential coverage of governments' competitive neutrality policies is generally satisfactory. The approach of New South Wales provides for the greatest potential coverage because competitive neutrality principles apply automatically to government businesses unless an individual government business presents a case that the costs exceed the benefits.

Apart from its government business enterprises, which constitute a large part of government business activity, Western Australia does not expose government businesses to competitive neutrality until they have been subject to a broad 'coverage review'. (This means its complaints mechanism cannot operate until the initial coverage review has occurred.) Western Australia has not required businesses operated by public hospitals, for example, to apply competitive neutrality principles. The Council has raised this matter with the government on several occasions since mid-2002, when a private radiation oncology company advised the Council of its concerns about competing with the radiation oncology department of a Perth public hospital. The Western

Australian Health Minister deferred any decision on this matter until the completion of a national inquiry into radiation oncology (the Baume inquiry). The findings of the Baume inquiry were released in September 2002, and the Australian Health Ministers Conference subsequently endorsed the final report that the Radiation Oncology Jurisdictional Implementation Group made in response to the Baume Report.

Western Australia advised the Council that the Minister for Health would consider the response to the Baume report. In mid-2004 Western Australia also advised that 'as a first step' in the process of the Minister determining whether a competitive neutrality review of radiation oncology services should be undertaken, the Department of Health will report to the Minister on whether such services should be considered a significant government business activity and whether a competitive market exists. Subsequently, the Minister for Health has committed to a competitive neutrality review of the radiation oncology services at the Perth public hospital being conducted in July 2005, when the acquisition of two major new assets will add significantly to the size of this government business.

The Council is concerned about the slowness with which Western Australia has addressed this two-year old competitive neutrality complaint and the general issue of applying competition neutrality to health businesses. This slowness has influenced perceptions of the integrity of the jurisdiction's competitive neutrality process. The Council welcomes, however, the Minister's decision to conduct a competitive neutrality review of radiation oncology services at the Perth public hospital in July 2005. It awaits the outcome of this review, and encourages the government to also review whether to subject all business activities of public hospitals to competitive neutrality principles.

Western Australia has not undertaken a competitive neutrality review of the Eastern Goldfields Transport Board, despite a private competitor having made repeated complaints to government about the board's competitive advantages when the board tenders for charter transport services in districts in which the board is permitted to operate. The complainant claims that the board cross-subsidises its charter operations by drawing on the subsidy it receives for its public transport services. Western Australia has advised the Council that the board's annual report does not contain sufficient detail to verify or refute the claim. The absence of a competitive neutrality review prevents the private competitor from making its complaint formally. The Council considers, therefore, that Western Australia should undertake a competitive neutrality complaints investigation.

More generally, the potential coverage of competitive neutrality policies has been partly eroded by governments' slow implementation of competitive neutrality to some businesses in the entertainment or recreational sectors. The Council also encourages governments to remain active in ensuring local government businesses apply competitive neutrality principles, particularly given that a large proportion of competitive neutrality complaints relate to local government businesses.

In the 2003 NCP assessment, the Council scrutinised the application of competitive neutrality principles to state forestry businesses in all states and the ACT. The Council assessed all jurisdictions except Victoria to be well advanced in meeting their CPA clause 3 obligations in this area. The Council noted, however, that the government forestry businesses of New South Wales, Victoria, Queensland and Tasmania were not liable for land rates and related local taxes. This year, the Council welcomes the further progress recently made by Victoria, via the corporatisation of VicForests, although the establishment process is not yet complete. The Council also endorses Tasmania's decision to subject Forestry Tasmania to local government rates, and looks forward to similar progress by Queensland through its consideration of whether to corporatise DPI Forestry.

Effective processes for handling complaints

CPA clause 3 requires governments to have a mechanism for considering complaints that particular government businesses are not appropriately applying competitive neutrality principles. All governments have instituted complaints processes, and their NCP annual reports document allegations and actions taken in response. Some governments require complaints to be made first to the relevant government business and then to an independent complaints body. In some jurisdictions, the independent body considers a complaint only if the relevant Minister(s) decides that this action is appropriate. Box 2.2 summarises jurisdictions' complaints mechanisms.

Box 2.2: Complaints mechanisms

In those jurisdictions where complaints can be made to an independent body, that body usually has been established to promote competition, pricing and market conduct outcomes, especially for government entities. Such bodies include **New South Wales'** Independent Pricing and Regulatory Tribunal, the **Queensland** Competition Authority, **South Australia's** Competition Commissioner, **Tasmania's** Government Prices Oversight Commission and the **ACT's** Independent Competition and Regulatory Commission. In New South Wales, the Premier can refer competitive neutrality complaints about tender bids to the State Contracts Control Board for independent assessment. Competitive neutrality complaints about **Australian Government** enterprises are investigated by the Australian Government Competitive Neutrality Complaints Office, which is located within the Productivity Commission.

In **Victoria**, the Competitive Neutrality Unit considers all complaints, although the unit encourages parties to first seek to resolve the differences themselves. The unit has been absorbed into the new Victorian Competition and Efficiency Commission, which began operation on 1 July 2004. It was previously located in the Treasury. In **Western Australia**, the Expenditure Review Committee of Cabinet handles complaints, with administrative support from the Competitive Neutrality Complaints Secretariat. In the **Northern Territory**, the Treasury handles complaints.

Some governments allow complaints to be lodged against only government businesses that are subject to competitive neutrality principles. In most states, complaints against local government businesses must be made first to the local government and then to the complaints body of that state.

Complaints highlighted in the 2004 National Competition Policy annual reports

The Australian Government, state and territory 2004 NCP annual reports provided information on recent competitive neutrality complaints that the jurisdictions had investigated.

Australian Government

A private company made a competitive neutrality complaint to the Australian Government Competitive Neutrality Complaints Office (AGCNCO) in November 2003 to the effect that the Australian Valuation Office (which is a business unit of the Australian Taxation Office) does not adjust its tender bids (for valuation contracts in the public and private sectors) for cost advantages arising from its use of Australian Taxation Office resources, and does not include a tax equivalent component in its costs. In May 2004 the AGCNCO completed its investigation of whether the Australian Valuation Office is applying the government's competitive neutrality requirements appropriately. It found that the Australian Valuation Office is a stand-alone business that does not have access to Australian Taxation Office resources at non-commercial rates, and does not enjoy any significant taxation, regulatory or debt financing advantages. The Australian Valuation Office also makes payments at commercial levels for all types of insurance except professional indemnity insurance, for which the AGCNCO recommended that the government require the Australian Valuation Office to make a competitive neutrality adjustment to its cost base when making tender bids.

New South Wales

New South Wales' 2004 NCP annual report noted that the government received three complaints about the State Valuation Office (a business unit within the Department of Commerce) over the year to 31 March 2004. In mid-2004 the government referred these complaints to the Independent Pricing and Regulatory Tribunal (IPART) for independent investigation. IPART has completed its investigation and published its determination in early October 2004. IPART found that the State Valuation Office had not breached competitive neutrality principles.

Victoria

The Competitive Neutrality Unit continued to investigate several complaints that had been made during 2002, and dealt with some that were initiated in 2003. The complaints related to child care, waste collection and community transport services operated by local councils, theatre venue hire by the Victorian Arts Centre Trust, and cemetery trusts. In several cases, the unit concluded that the government businesses had not breached competitive neutrality policy. In the case of cemetery trusts, the investigation has led to

the Department of Human Services conducting a pricing review, which will be followed by the introduction of more transparent pricing of memorialisation goods and services. One local council has reviewed financial data relevant to its waste collection service and made competitive neutrality cost adjustments that satisfy the requirement that the service be fully cost-reflective.

Queensland

During 2003, the Queensland Competition Authority received a complaint from a legal company which claimed that the Environmental Protection Agency and the Office of State Revenue gave preferential database access to a government business. It investigated the matter and concluded that none of the agencies had breached competitive neutrality.

Queensland's 2004 NCP annual report noted that 637 of the 664 local government businesses subjected or committed to competitive neutrality reform have been subjected to complaint processes (compared with 561 a year earlier).

Western Australia

A private company that exports potatoes to Mauritius submitted a complaint to the Western Australian Complaints Secretariat that the Potato Marketing Corporation had undercut the private company's export prices as a result of competitive advantages arising from the corporation's monopoly status in the domestic market. The government appointed an Implementation Advisory Group to review the *Marketing of Potatoes Act 1946*, and tabled the review report in Parliament on 1 July 2004. The report recommended the separation of the corporation's regulatory and commercial functions, and the cessation of its potato exporting. The Act is likely to be amended in 2005 to account for these and other recommendations in the report, and the Potato Marketing Corporation has entered a transition phase during which it will refrain from exporting (apart from honouring existing contracts). The government considers that these changes will address the cause of the competitive neutrality complaint.

The Complaints Secretariat has been considering complaints against government businesses that are not formally required to comply with competitive neutrality principles, including a complaint about the Department of Conservation and Land Management providing trees below cost through funding by the Natural Heritage Trust — the complainant was informed that this pricing is part of government policy to further environmental aims

South Australia

In May 2002 the South Australian Competition Commissioner received a complaint against Supply SA regarding sales of school stationery. Following

an investigation, the commissioner found that Supply SA's short term pricing was consistent with its obligation to price stationery on a cost-reflective basis. South Australia also received a complaint against Monarto Quarries, which is a subsidiary of the Mount Barker District Council. The complainant queried whether contributed assets were fully accounted for. The complaint was investigated by an independent consultant, and the Mount Barker District Council implemented the consultant's recommendations.

Tasmania

The Government Prices Oversight Commission received one formal competitive neutrality complaint in 2003. The complainant claimed that a waste disposal authority jointly owned by three local councils was not applying full cost attribution to its services, but the commission found that the waste disposal authority was not breaching competitive neutrality policy.

The ACT

In the year to 31 March 2004, the ACT's Independent Competition and Regulatory Commission did not receive any competitive neutrality complaints.

The Northern Territory

The Northern Territory Treasury received a competitive neutrality complaint in June 2003 relating to Data Centre Services, which is a government business division that provides data storage and other information technology services to the public sector. A private data services provider lodged a formal complaint that Data Centre Services had not fully reflected its costs in its bid for a tender, but withdrew the complaint in September 2003.

Assessment of complaints handling

The Council considers that governments' complaints mechanisms are operating satisfactorily. Nevertheless, competitive neutrality complaints investigations processes could be improved in two areas:

1. Some jurisdictions provide for Ministers to decide whether an independent body should hear complaints. Such an arrangement may reduce the degree of independence with which a complaint is considered, and increase the time between the complaint's lodgement and resolution.

2. Complaints must be dealt with expeditiously and effectively; otherwise, the complainant may be adversely affected, and confidence in the competitive neutrality arrangements may be undermined. Complaints processes appear to have been slow in some cases.

While these concerns do not indicate widespread systemic failures, the Council encourages governments to consider options for accelerating investigation processes and any subsequent actions. It considers improvements in the speed with which complaints are investigated and resolved are warranted, and will monitor jurisdictions' performance in this regard.

Increasing the scope of competitive neutrality

Since the CPA was signed in 1995, considerable strides have been made in the application of competitive neutrality to government business enterprises. Several governments, however, have been slow to apply competitive neutrality principles to certain key sectors of the economy, particularly health services and universities.

- Some governments have been reluctant to apply competitive neutrality principles to their health businesses, possibly because they are concerned that the price of these (potentially competitive) services would increase if prices reflected appropriate costs. However, rather than have recourse to hidden cross-subsidies, it would be more appropriate for governments to fully implement CoAG's agreement in 2000 that CSOs should be transparent, appropriately costed and directly funded by government. Such implementation would promote: greater competition in the provision of health services to the community; more choice for consumers; increased efficiency in service provision; and scope for governments to subsidise one or more of the providers of a health service or, alternatively, the users of the service.

- Most governments do not subject their universities to competitive neutrality principles (although Western Australia is amending its university Acts to ensure they adopt the principles). As a result, private contractors and consultants have complained about competition from university based companies or individuals offering prices that private parties consider do not reflect all costs. In addition to disadvantaging private competitors, the lack of competitive neutrality might have contributed to universities' expansion into various economic ventures, some of which have experienced difficulties and contributed to financial problems for universities. With the application of competitive neutrality, universities may be less tempted to establish enterprises that offer prices that do not reflect the full attribution of costs.

Delivery of community service obligations

At its meeting on 3 November 2000, CoAG discussed competitive neutrality issues and agreed that there is no requirement for governments to undertake a competitive process for the delivery of community service obligations (CSOs) and that governments are free to determine who should receive a CSO payment or subsidy. CoAG stated that CSO payments should be transparent, appropriately costed and directly funded by the government. The Council considers that some governments, including local governments, still need to pay attention to these desirable characteristics of CSO payments.

CSOs should not be funded through cross-subsidies within a government business, because such cross-subsidies can handicap the competitiveness of the government business. In addition, to improve the capacity of government businesses to fund cross-subsidies, governments have sometimes established regulations that restrict the competition facing the government business, with a flow-on cost to consumers. These restrictions aim to promote economic rents to 'fund' the cross-subsidies. Governments should also avoid reducing the required rate of return for agencies delivering CSOs, because this affects all facets of the performance of the businesses.

When governments directly fund CSOs, they remove the resource allocation distortions caused by cross-subsidies and regulatory intervention. If governments clearly identify and report CSOs in their budgets and departmental accounts, they facilitate community awareness of the CSOs, comparisons with other community demands on the public purse, and periodic reviews of CSOs. While CoAG agreed in November 2000 that governments are not required to undertake a competitive process for the delivery of CSOs, direct funding and transparency of CSOs tend to highlight to governments the potential advantages of tendering, which can reduce the cost of delivering CSOs and introduce innovative methods for their delivery.

Governments need to take care to appropriately cost and transparently report all CSOs — not just those paid to government business enterprises, but also those paid to any government agency that conducts commercial operations (for example, government-owned cultural institutions).

Financial performance of government forestry businesses

In the 2003 NCP assessment, the Council found that, with the exception of Victoria, all states and the ACT were well advanced applying competitive neutrality principles to government forestry businesses, having corporatised or commercialised these businesses. Victoria was less well advanced but the

government had made a public commitment to the reform of Forestry Victoria, then a division of the Department of Sustainability and Environment[2].

However, the Council was unable to confidently assess any government as fully meeting its competitive neutrality obligations with respect to public forestry businesses, as none had yet established a track record of earning adequate profits.

Recent performance

The Productivity Commission has a program of research designed to provide comparable information on the financial performance of government trading enterprises (GTEs). This is the second year its report has included government forestry businesses. It found that the profitability of the sector as a whole, measured as the return on assets[3], improved from 4.4 per cent in 2001-02 to 7 per cent in 2002-03. Four of the six monitored businesses improved their profitability in 2002-03, while one — Forestry Tasmania — reported a negative return (see table 2.1).

Table 2.1: Profitability of government forestry businesses[a]

Government forestry business	*State Forests of NSW*	*DPI Forestry (Qld)*	*Forests Products Commission (WA)*	*ForestrySA*	*Forestry Tasmania*	*ACT Forests*
2001-02 return on assets (%)	2.4	10.6	8.7	4.6	1.6	4.0
2002-03 return on assets (%)	0.5	23.8	7.6	6.8	-0.6	16.3

[a] The correction of errors in earlier forest valuations increased the 2001-02 profit of the Forest Products Commission (WA) by $10.2 million and decreased the profit of Forestry Tasmania by $12.25 million. In 2002-03, ACT Forests recognised insurance recoveries following the 2003 bushfire.

Source: PC 2004a.

As noted by the Commission, in 2002-03 the risk–free rate of return, taken to be the 10 year Commonwealth Government bond rate, was 5.4 per cent (PC 2004a, p. 7). Given the market risk inherent in any business it is reasonable to expect government forestry businesses to earn a return significantly above this rate. In 2002-03 government forestry businesses, with the exception of State Forests of NSW (SFNSW) and Forestry Tasmania, exceeded the risk-free rate of return by a significant margin.

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2 As noted, Victoria has since established VicForests as a state-owned enterprise.

3 The Commission defines return on assets as earnings before interest and tax and after abnormals (including asset valuation changes) over average total assets.

However, the Commission cautions that the profitability results of government forestry businesses can vary dramatically from year to year, due to the recognition under Australian Accounting Standard AAS35 of movements in the market value of their forest assets in the statement of financial performance. Under AAS35, forest assets are valued annually using market prices either of timber as standing currently or as grown to maturity (under a net present valuation technique). Timber prices and, therefore, the valuation of forest assets and the financial performance of forestry businesses, are sensitive to fluctuations in demand. For performance monitoring purposes, annual rates of return need to be assessed in the context of longer-term trends and other relevant information.

Longer term performance

Some longer term performance information is available for SFNSW, DPI Forestry (DPIF) and Forestry Tasmania which have been established in their current form for some years. This information is not, in the Council's view, yet sufficient to draw firm conclusions about whether these government forestry businesses will in the long run earn returns that recover their cost of capital and, therefore, fully meet the aims and principles of competitive neutrality. Presenting it, however, serves to illustrate some of the difficulties of drawing firm conclusions. Some of these difficulties may be overcome with more intensive scrutiny and analysis. Alternatively, the power of competitive neutrality policy to assure in any timely manner that resources are being allocated efficiently in forestry, where governments operate businesses in this sector, may be limited.

New South Wales

The average annual return on assets of SFNSW over seven years to 2002-03 is slightly over 1 per cent (New South Wales Treasury 2004). For 2003-04 and the following two years, SFNSW expects an annual average return on assets of around 2 per cent (Government of New South Wales 2004).

The government argues that these apparently poor returns partly reflect heavy investment in expanding SFNSW's plantation estate over the past 10-20 years, which has significantly increased its asset base, and the annual costs of protecting and enhancing the growing stock. It also notes that the available cut can exceed processing capacity in New South Wales at present and that this weakens State Forests' bargaining power in price negotiations with processors. It expects SFNSW's profitability to increase over five to 15 years as processing capacity expands, lifting prices, and as plantations mature and are harvested.

Queensland

DPIF has earned an average annual return on assets of 11 per cent for the five years to 2002-03 (DPIF 2003). Rolling forward the government expects this five year average to drop to under 7 per cent by 2005-06 (Government of Queensland 2004). With the Queensland Audit Office, DPIF has established its real cost of capital in the range of 6–7.5 per cent. Expected returns currently fall within this range but are sensitive to factors outside the control of DPIF such as historical resource management decisions and current market conditions. DPIF therefore focuses on enhancing the performance of the business through assessing plantation investments against its cost of capital.

Tasmania

Forestry Tasmania has earned annual returns over the three years to 2002-03 averaging 2 per cent before forest valuation changes (Forestry Tasmania 2003). The government expects similar returns for 2003-04 and the following two years if domestic and export markets remain at their current high levels of demand.

The government expects Forestry Tasmania to meet or exceed its hurdle rate on all new investments, but does not expect it to meet its cost of capital in respect of assets managed for non-commercial purposes, such as parkland.[4]

[4] This appears to be a case where the Council comments above on the delivery of community service obligations are applicable.

3 Structural reform of public monopolies

The protection of some public monopolies from competition through regulation or other government policies has allowed structures to develop that do not readily respond to market conditions. Rectifying strategies include removing the relevant legislative restrictions and applying competitive neutrality principles. These strategies, however, will not always be sufficient to establish effective competition. Structural reform may be needed to dismantle an integrated government monopoly business. Such reform involves splitting the monopoly (or parts of it) into smaller entities, including separating the competitive or potentially competitive elements from the monopoly elements.

Structural reform is particularly important where a public monopoly is to be privatised. Privatisation without appropriate structural reform is likely to result in a private monopoly supplanting the public monopoly with few real gains and potentially considerable risks. Clause 4 of the Competition Principles Agreement sets out obligations relating to the structural reform of public monopolies. Under this clause, governments agreed to relocate regulatory functions away from a public monopoly before introducing competition to the market served by that monopoly. The aim is to prevent the former monopolist from enjoying a regulatory advantage over existing or potential competitors.

Clause 4 also sets out review obligations aimed at ensuring reform paths lead to competitive outcomes. Before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly, governments have undertaken to review:

- the appropriate commercial objectives of the public monopoly
- the merits of separating potentially competitive elements of the public monopoly from the natural monopoly elements and into independent competing businesses
- the best way of separating regulatory functions from the monopoly's commercial functions
- the most effective way of implementing competitive neutrality
- the merits of any community service obligations provided by the public monopoly and the best means of funding and delivering them
- price and service regulations to be applied to the relevant industry

- the appropriate financial relationship between the owner of the public monopoly and the public monopoly.

In its National Competition Policy (NCP) assessments, the National Competition Council has considered each jurisdiction's structural review and reform activity (including the location of industry regulation) where competition is introduced to public monopoly markets or where privatisation is proposed or under way. The Council previously determined that the relevant jurisdictions met their clause 4 obligations in relation to:

- the statutory dairy authorities in all states and the ACT
- the Queensland Sugar Corporation
- the rail sector in New South Wales, Western Australia and Victoria
- port authorities in New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania
- the Sydney basin airports (an Australian Government matter).

Areas previously determined to not comply with clause 4 obligations relate to AWB Limited and Telstra. Information on these Australian Government areas is provided below.

In this 2004 NCP assessment, the Council considered the structural reform of Western Power, the public monopoly in the Western Australian electricity sector. A summary of progress is provided below, with more detailed information provided in chapter 6.

Western Power

In the 2003 NCP assessment, the Council noted the government's endorsement of the Electricity Reform Task Force's recommendations, including the following relating to the state's CPA clause 4 obligations:

- the vertical disaggregation of Western Power into generation, networks and retail entities in the South West Interconnected System, and a regional power entity in the North West Interconnected System and non-interconnected systems, by 1 July 2004
- the development of an Electricity Access Code by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The *Electricity Industry Act 2004* implements several task force reforms, providing for the development of a wholesale market in the south west of the state, an independent licensing regime for electricity industry participants, a third party access code and consumer protection measures. The wholesale market is expected to commence in July 2006. The independent Economic

Regulatory Authority commenced on 1 January 2004 and will administer the electricity licensing regime. The establishment of the independent regulator is consistent with Western Australia's obligations under the CPA clause 4(2) which requires a government to remove responsibilities for industry regulation from a public monopoly before introducing competition to a sector traditionally supplied by the monopoly.

However, the government has not disaggregated Western Power into generation, network, retail and regional entities. The task force considered such disaggregation to be a central reform. CPA clause 4(3) requires governments, before introducing competition to a market supplied by a public monopoly, to review the merits of separating natural monopoly elements. Chapter 6 discusses the implications of Western Australia's non-introduction of disaggregation for the state's adherence to CPA clause 4.

AWB Limited

In early 2000, the Australian Government commissioned a three-member committee to review the *Wheat Marketing Act 1989* against CPA clauses 4 and 5 and other policy principles. In relation to the structural reform obligation under CPA clause 4, the committee found that the Act does not clearly separate the regulatory and commercial functions of AWB Limited (the former Australian Wheat Board). It recommended that the Australian Government amend the Act to:

- ensure the Wheat Export Authority (WEA) is totally independent
- allow, for the three years until the 2004 review, the WEA to consent to the export of:
  - wheat in bags and containers without consulting AWB International (AWBI) Limited
  - durum wheat without obtaining the AWBI's written approval.

The Australian Government responded in April 2001 but declined to amend the Act to ensure the independence of the WEA, particularly in relation to the export consent arrangements. It argued that removing the AWBI's role in these arrangements would significantly change the balance between the operations of the WEA and the AWBI, which might have affected the AWB Limited's then proposed listing on the Australian Stock Exchange. In the Council's view, these arguments are not sufficient to underpin the Australian Government's failure to conduct a CPA clause 4 review before privatising the former Australian Wheat Board. In the 2003 assessment, therefore, the Council found that the Australian Government had not met its CPA clause 4 obligations.

On 15 October 2004 the independent panel appointed by the government to review the wheat export marketing arrangements released a summary report

of its findings and recommendations — the 'Growers' Report'. The terms of reference of the review limited it to assessing the AWBI's performance as the manager of the wheat export 'single desk', its conduct in relation to consents by the WEA to wheat exports by other parties, and the WEA's performance of its functions under the Act. The terms of reference specified that:

> *Analysis of whether or not the single desk should continue is not within the scope of the review and the review is not intended to fulfil National Competition Policy requirements.* (Truss 2003)

Further, in relation to bulk wheat export consents, the panel did not examine options for removing the veto power of AWBI, arguing that this is intrinsic to the single desk system. However, it recommended that the AWBI and WEA ensure greater transparency and accountability in the exercise and monitoring of this power. In particular it recommended that AWBI provide more explicit explanation to exporters on any decision to veto a bulk export application. The Australian Government has indicated it will respond to this and other recommendations of the review by late 2004.

Nevertheless, the incomplete nature of the review means the Council is still unable to assess the Australian Government as having met its CPA clause 4 obligations.

Telstra

Legislation in 1997 and 1999 provided for the part privatisation of Telstra which triggered commitments for the Australian Government under CPA clause 4 to review 'the merits of separating natural monopoly elements from potentially competitive elements of the public monopoly' before privatising a public monopoly. In regard to this obligation, the Council reported in its 1999 NCP assessment that:

> *This examination should have been undertaken prior to the partial privatisation and should have involved considering the merits of structurally separating the local fixed network from the non-monopoly elements of Telstra's business, or alternatively, arrangements for ring-fencing the local fixed network and Telstra's business units.* (NCC 1999, p. 338)

The Australian Government advised the Council that it considered that it had satisfied this requirement through related reviews. Moreover, it contended that it preferred, rather than pursuing structural separation, to prohibit anticompetitive conduct through part XIB of the *Trade Practices Act 1974* and to facilitate access to telecommunications services under Part XIC of that Act.

In 2000, the Australian Government asked the Productivity Commission to review telecommunications regulation, but instructed it not to inquire into options for the structural separation of Telstra. The Commission made recommendations to improve the efficiency of the regime regulating access to

the telecommunications network. Taking account of these recommendations, the Australian Government made legislative changes requiring Telstra to prepare separate accounts for its wholesale and retail operations. Accordingly, the Australian Competition and Consumer Commission introduced changes to the record-keeping rules that it applies to major telecommunications companies, to complement the introduction of accounting separation by Telstra. These reforms somewhat mitigate the concerns about the market power of Telstra.

Through the Productivity Commission review and subsequent legislative changes, the Australian Government has made efforts to meet its NCP obligations relating to the partial and potential full privatisation of Telstra. Nevertheless, the Council remains of the view that the government, to have complied with its obligations under the CPA, should have considered the structural separation of the network in a formal way.

4 New legislation that restricts competition

Clause 5(1) of the Competition Principles Agreement (CPA) — the guiding principle — obliges governments to ensure that legislation does 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 be achieved only by restricting competition.

Complying with CPA clause 5 involves the following three types of action by governments:

1. ensuring the existing stock of restrictive legislation meets the pro-competitive guiding principle — clause 5(3)
2. requiring all new legislation that restricts competition to be consistent with the guiding principle — clause 5(5)
3. systematically reviewing legislation that restricts competition at least once every 10 years to ensure the guiding principle is met over time — clause 5(6).

By requiring new legislation that restricts competition to be consistent with the guiding principle, clause 5(5) completes the process of ensuring all (existing and new) legislation does not unnecessarily restrict competition. This requirement extends to both primary legislation (Acts of Parliament) and subordinate legislation (generally, regulations made under enabling primary legislation).

The importance of CPA clause 5(5)

CPA clause 5(5) aims to provide the community with an assurance that unwarranted anticompetitive restrictions are not removed from existing legislation only to resurface in new legislation.

An effective gatekeeping mechanism is a necessary condition against the introduction of legislation that is not in the public interest. But it is not a sufficient condition. A robust gatekeeping *model* does not of itself guarantee *outcomes* consistent with governments' clause 5(5) obligations.

The effectiveness of gatekeeping arrangements is ultimately demonstrated by the quality of legislation that is promulgated.

In assessing compliance with clause 5(5), the National Competition Council does not seek to impose itself as an additional layer to assess the quality of new legislation and whether impacts on competition have been considered. Instead, the primary focus of the Council is to ensure jurisdictions have rigorous gatekeeping mechanisms in place and that they have been applied reasonably broadly. If the Council is unable to attest to this, it will, as part of its broader assessment of governments' compliance with the CPA, examine new legislation for anticompetitive impacts. This scrutiny may be more likely where the passage of particular legislation is incongruous with gatekeeping mechanisms in place.

Principles for effective gatekeeping

The Council considers the clause 5(5) obligations to mean that governments should have legislation gatekeeping arrangements that maximise the opportunity for regulatory quality. Effective gatekeeping requirements would meet the following principles:

- All legislation that contains nontrivial restrictions on competition should be subject to a formal regulatory impact assessment to determine the most effective and efficient approach to achieving the government's regulatory objective, including alternatives to regulation. The impact analysis must explicitly consider competition impacts.

- There are mandatory guidelines for the conduct of regulation impact analysis by government bodies.

- An independent body with relevant expertise advises agencies on when and how to conduct regulatory impact assessment, and is empowered to examine regulatory impact assessments and advise on the adequacy and/or quality of the analysis.

Where possible, there should also be ongoing monitoring and annual reporting by the independent body on compliance with the regulation impact analysis requirements.

The Council informed all governments of these key principles before preparing its 2004 National Competition Policy (NCP) assessment of jurisdictional compliance with CPA obligations. One government has noted that clause 5(5) does not require jurisdictions to comply with the specific gatekeeping arrangements that the Council has established as its preferred model of compliance with clause 5(5). However, in determining its competition payment recommendations, the Council has obligations under the Agreement to Implement National Competition Policy and Related Reforms to assess whether the parties have 'given full effect to, and continue to observe

fully, the Competition Policy Intergovernmental Agreements'. Legislative gatekeeping arrangements are an important element of these arrangements.

The Council notes that gatekeeping processes are dynamic in nature and governments have in recent years sought to enhance their existing processes. The continual raising of the best practice benchmark helps to enshrine the gains realised from competition policy to date.

A key area where the Council considers there to be scope for enhancement is for governments to establish fully independent assessors of new regulation. The Council notes that there is currently a spectrum of assessors in terms of rigour. They vary from bodies with actual and perceived independence — such as the federal Office of Regulation Review (ORR) and the Victorian Competition and Efficiency Commission (VCEC) to units within the Departments of Premier and Cabinet. Within this range, governments also have assessors located within state treasuries or through interdepartmental committees.

As a general principle, the Council considers that fully independent assessors provide the highest quality safeguards against the introduction of new legislation that is inconsistent with CPA clause 5(5). Even where it is not feasible for governments to create such mechanisms in the short term, the Council considers that improvements can be made to existing mechanisms.

For smaller states and territories, it may not be feasible to establish standalone agencies such as Victoria's VCEC. An alternative may be to consider incorporating the gatekeeping role within the independent prices oversight agencies that operate in all jurisdictions (such as the Queensland Competition Authority and the Western Australian Economic Regulation Authority) where these agencies can be resourced to scrutinise proposed regulations for competition impacts. Alternatively, where regulatory review mechanisms remain within general government, controls may be necessary to ensure that review functions are not compromised by policy priorities.

Irrespective of the model chosen, the ultimate aim should be to facilitate the separation between policymaking and scrutiny to increase the actual and perceived independence of the gatekeeping function.

The Council's assessment of the quality of jurisdictional gatekeeping mechanisms against the best practice requirements and an identification of areas for improvement is outlined below.

Governments' gatekeeping arrangements

The Council recognises that governments have generally made progress in recent years in developing gatekeeping mechanisms. However, the Council

does not consider that some governments have yet achieved best practice compliance with clause 5(5).

All governments provide guidelines on how to consider the impacts of proposed legislation, including those impacts related to competition policy. However, independent review mechanisms for testing the quality of regulation impact statement (RIS) analysis can be absent, which may reduce incentives for regulation-making bodies to critically analyse proposed regulatory impacts. Further, processes for primary legislation can be less rigorous than those for subordinate legislation in many jurisdictions.

Improvements in regulatory best practice processes assist in ensuring regulations are created where they deliver net benefits to the community, and in the least restrictive manner. For example, more rigorous application of best practice gatekeeping processes may yield better outcomes in areas such as the restrictions on legal advertising regulations (see box 4.1).

Box 4.1: Legal advertising regulations across jurisdictions

Recently introduced restrictions on legal advertising for personal injury are intended to address the problem of the dramatically escalating costs of public liability insurance reducing public access to insurance. However, it is not clear that advertising restrictions are the most effective means of reducing public liability indemnity costs. Advertising restrictions can create significant restrictions on competition because they can make it harder for newly qualified practitioners and practitioners entering new markets to inform potential clients of their services.

There may be other regulatory alternatives that can more effectively address public liability costs, without imposing restrictions on competition to the same degree. These alternatives may include building on the reforms to which jurisdictions agreed in 2002 to address public liability insurance costs; for example, changing the application of tort law, using structured settlements and implementing risk management strategies.

The following sections summarise new legislation imposing advertising restrictions.

New South Wales

The State's advertising restrictions on lawyers are imposed by the Legal Profession Regulation 2002. These were first inserted by the Legal Profession Amendment (Advertising) Regulation 2002, and were strengthened in 2003 by the Legal Profession Amendment (Personal Injury Advertising) Regulation 2003. While the latter regulation was subject to consultation with the profession, it was not subject to RIS requirements. Further, the *Legal Profession Legislation Amendment (Advertising) Act 2003* will allow regulations to be made that prohibit third-party advertising in a way that undermines the ban on lawyers advertising in relation to personal injury or work injury.

Queensland

Queensland's *Personal Injuries Proceedings Act 2002* does not prohibit lawyers from advertising personal injury services, but it does restrict the advertising medium and the nature of the message. Any advertising must include only factual information, including the lawyer's name and contact details, and the conditions under which they are prepared to provide personal injury services. However, advertising 'no win, no fee' personal injury services is not permitted.

Further, advertising can be published only by certain allowable methods such as printed publications. Advertising in hospitals or on the radio or television is not permitted.

Western Australia

The Western Australian Government introduced the *Civil Liability Act 2002,* which limits personal injury advertising by restricting the publishing of any statement that may encourage a person to make a claim for compensation, including a claim relating to personal injury. Like Queensland, the state also restricts the nature of the advertising medium.

Northern Territory

The Northern Territory Government introduced the *Legal Practitioners Amendment (Costs and Advertising) Act 2003,* which confines the advertising of personal injury matters to limited factual matters and selected media. The legal practitioner is also prohibited from publishing a statement that will encourage a person to make a claim for damages for personal injuries.

The following section examines governments' new legislation gatekeeping arrangements against the CPA clause 5(5) obligation, and considers whether the arrangements meet best practice principles for effective gatekeeping. Table 4.1 summarises and compares governments' approaches to gatekeeping.

The Australian Government

The Australian Government publication *A Guide to Regulation (*ORR 1998) requires a RIS to be prepared for all new and amended regulation, with limited exceptions, that has the potential to restrict competition or impose costs or confer benefits on business. The RIS must clearly identify the problem(s) and relevant policy objectives, and assess the costs and benefits of alternative means of fulfilling the objectives.

RISs are included in the explanatory material for both primary and subordinate legislation, enhancing the transparency of the decision-making process. The requirements for subordinate legislation have been enhanced by the passage of the *Legislative Instruments Act 2003,* which is expected to come into operation on 1 January 2005. The main features of the legislation are that:

- all legislative instruments (including regulations, disallowable instruments, ordinances and proclamations) must be registered under the scheme unless exempted
- rule-making agencies must ensure appropriate consultation has occurred before making a legislative instrument
- all registered instruments will be sunsetted after 10 years, subject to exceptions.

The ORR oversees the Australian Government's regulatory review process. It advises federal departments and agencies on whether a RIS should be prepared. It also is responsible for examining and advising on the adequacy of analysis contained in all RISs prepared, at both the decision-making and

transparency stages (for example, when the legislation and accompanying RIS are tabled in Parliament). The office provides departments and agencies with guidance and training on the RIS requirements. It also reports on compliance with the RIS requirements in the annual publication *Regulation and its review* (published by the Productivity Commission).

Assessment

The Council notes that the Australian Government's gatekeeping arrangements comply with NCP obligations for effective gatekeeping. In particular, the ORR makes a significant contribution to improving regulatory quality and transparency by monitoring the compliance of departments with the government's regulatory requirements.

The Council considers that the only significant aspect of the federal regulatory review practice regime that could be improved is the provision of statutory backing to RIS requirements for subordinate legislation. While the administrative requirements of the current government require RIS analysis of such legislation, the Legislative Instruments Act does not explicitly require a RIS to be prepared for subordinate legislation. This is in contrast to the equivalent subordinate legislation Acts in some state and territory jurisdictions, and may increase the potential for subordinate legislation to be prepared without adherence to RIS requirements.

New South Wales

New South Wales uses both legislative and administrative provisions to implement its legislative gatekeeping arrangements. The provisions require all legislative proposals to include impact analysis.

When government agencies submit Cabinet minutes that propose a new regulatory control (including primary and subordinate legislation), they must demonstrate that the New South Wales approach — as outlined in *From red tape to results — government regulation: a guide to best practice* (Government of New South Wales 1995) — has been applied in assessing the regulatory impact of the proposal. In particular, the guide notes that RISs must identify alternative options by which stated objectives can be achieved, assess the costs and benefits (including on resource allocation) of the proposed regulation and identify options with the greatest net benefit or least net cost to the community.

The Cabinet Office, in its role as coordinator of the government's NCP program and advisor to agencies on regulatory best practice, scrutinises all legislative proposals and assists agencies to integrate RIS analysis into the policy and legislation-making process. This role applies to both primary and subordinate legislation.

Under the *Subordinate Legislation Act 1989*, New South Wales government agencies must also prepare RISs for proposed principal statutory rules[1] before the rules can be made. The *Manual for preparation of legislation* (Government of New South Wales 2000) and the guidelines in schedule 1 of the Act provide guidance on meeting the Act's requirements. Ministers must also certify compliance with the requirements of the Act.

Ministers are required to table a copy of the RIS in the same sitting week in which Parliament is notified of the new regulation, or as soon as possible thereafter. Following tabling, proposed subordinate legislation is subject to the scrutiny of the Legislation Review Committee (LRC) — a joint statutory committee — which monitors whether:

- the regulation may have an adverse impact on the business community
- the objectives of the regulation could have been achieved by alternative and more effective means.

Direct amendments to statutory rules are exempt from the requirement to prepare a RIS though they can impose significant restrictions on competition. The Legal Profession Amendment (Personal Injury Advertising) Regulation 2003, for example, effectively prohibits barristers and solicitors from advertising personal injury legal services (a severe restriction to competition). While consultation was undertaken, this direct amendment to the principal statutory rule was implemented without an accompanying RIS or substantial new evidence to demonstrate a net public benefit.

Assessment

The New South Wales Government has implemented several key measures that contribute to improving the quality of new legislation consistent with the requirements of clause 5(5). These measures include the tabling of RISs for subordinate legislation and the requirement that Ministers certify that a new regulatory proposal complies with the provisions of the Subordinate Legislation Act. However, New South Wales can enhance processes in accordance with clause 5(5) in several areas.

First, there is no clear independent mechanism for advising the government on the likely impact of proposed regulations prior to introduction into Parliament. While the Cabinet Office advises agencies on regulatory best practice, the Council has reservations about the transparency of the Office's review mechanisms and its apparent lack of separation from the policy development process. This is in contrast to the federal ORR which is located within the Productivity Commission — an independent statutory authority.

[1] The Subordinate Legislation Act defines a principal statutory rule to mean a statutory rule that contains provisions apart from direct amendments, repeals and provisions that deal with its citation and commencement.

Consideration should therefore be given to relocating the regulatory review function outside of the Cabinet Office.

Second, the regulatory best practice requirements for primary legislation do not appear to be as rigorous as those for subordinate legislation, despite primary legislation creating the basis for subordinate legislation. An option for addressing this shortcoming may include mandating the preparation of RISs for primary legislation with material impacts. Further, the power of the LRC could be expanded to examine the broader impacts of proposed primary legislation, including the adverse impacts on the business community as is the case for subordinate legislation.

Finally, the Council previously raised concerns about direct amendments of subordinate legislation being excluded from the requirements of regulatory impact analysis. The state has responded, noting that the Subordinate Legislation Act requires the Minister to ensure agencies comply with the Guidelines for the preparation of statutory rules (located in schedule 1 of the Act). While the Council acknowledges that the guidelines require RIS-type analysis, it considers that the requirements are not as rigorous as those for proposed new subordinate legislation, including the requirement to table a RIS in Parliament.

Victoria

As part of the Victorian economic statement, *Victoria: leading the way* (announced on 20 April 2004), the State Government announced the establishment of the Victorian Competition and Efficiency Commission (VCEC). This body was established through an Order-in-Council under the *State Owned Enterprises Act 1992* that was gazetted on 1 July 2004 and replaces the Victorian Office of Regulation Reform.

Section 3 of the Order states that the functions of VCEC include:

- for the purposes of section 19(2) of the *Subordinate Legislation Act 1994*, providing independent advice as to the adequacy of RISs and of the costs and benefits of proposed statutory rules and of any other practicable means of achieving the same objectives contained within RISs

- providing independent advice as to the adequacy of any business impact statements (a primary legislation equivalent to RISs prepared for subordinate legislation).

The criteria for undertaking these assessments will be based on the current RIS guidelines until the revised guidelines can be put in place later in the year. These guidelines include the *Regulatory impact statement handbook* (VORR 1995) and *Guidelines for the application of the competition test to new legislative proposals* (Premier of Victoria 1995).

At present, the Victorian Cabinet handbook specifies that all Cabinet submissions must state whether the legislative proposal will restrict competition. If proposed legislation restricts competition, the Cabinet handbook requires the submission to describe the nature of the proposed restriction, along with the details of any NCP review undertaken. Where NCP reviews propose restrictions on competition, the submission must provide an adequate public interest justification for the restrictions. These requirements will be in addition to VCEC-endorsed business impact statements for significant legislative proposals.

The *Subordinate Legislation Act 1994* requires the preparation of a RIS for new or amended subordinate legislation proposals. This process requires an assessment of a proposal's competition implications, consistent with NCP principles. RIS guidelines give detailed instructions on how to conduct an NCP assessment of restrictions on competition, including the identification of costs, benefits and alternatives through a consultative process.

Once a RIS has been prepared it must be publicly circulated, with the Minister informing the community of the proposed statutory rules and RIS by placing a notice in the Gazette and a daily newspaper that is generally circulated in Victoria. The Subordinate Legislation Act also requires an independent assessment of the RIS to certify the adequacy of its analysis. VCEC will now undertake this role.

The Scrutiny of Acts and Regulations Committee of Parliament examines compliance with the Act. If the Committee considers that a RIS is deficient, it writes to the appropriate Minister seeking a response and rectification of the issues. The committee's ultimate sanction is to move a motion of disallowance for the regulations.

To date, Victoria has not undertaken any regular and comprehensive reporting on RIS compliance. However, this will change following the establishment of VCEC which will annually report to the Minister on the extent of departmental compliance with regulatory best practice requirements.

Assessment

The Council considers that Victoria's processes for developing legislation are consistent with clause 5(5) of the CPA.

RISs are required for subordinate legislation, and they must be independently scrutinised before tabling in Parliament. VCEC is likely to strengthen these processes. The Council also notes that VCEC-endorsed business impact statements will now be prepared for Cabinet proposals requiring significant changes to primary legislation. This supplements the previous mechanism of considering proposed legislation impacts as part of the Cabinet briefing process, and enhances regulatory best practice measures in place.

Queensland

Under the Queensland Government's new legislation gatekeeping arrangements, all new (including amending) legislation that restricts competition must be subjected to a public benefit test before Cabinet considers the policy proposal. The type and scope of each review are determined in accordance with the *Public benefit test guidelines* (Government of Queensland 1999) issued by Queensland Treasury. The guidelines require the public benefit test to identify the nature and incidence of all relevant economic, social and cultural costs and benefits to the community of restricting competition, compared with other means of achieving the government's objectives. They provide explicit guidance on how agencies should assess legislation for compliance with CPA clause 5 when undertaking a public benefit test, and require agencies to liaise with Treasury throughout the assessment process.

In addition, under the *Statutory Instruments Act 1992*, departments and agencies must prepare a RIS before making any subordinate legislation that is likely to impose appreciable costs on the community or a part of the community. The Act also requires agencies to include the RIS in their consultation on the proposed statutory instrument. It includes guidelines on matters that the RIS must address. The guidelines explain that such a statement must include an assessment of the costs and benefits of the proposed legislation and, if practical and appropriate, compare them with the benefits and costs of any reasonable alternative to the legislation. As a minimum requirement, the RIS must assess the proposed subordinate legislation against the existing arrangements, and include qualitative assessment of the costs and benefits. The Business Regulation Reform Unit (BRRU) administers the section of the Act relating to the conduct of a RIS and provides more detailed guidelines and advice in this area.

Any RIS must be made available to members of the public, and must accompany the explanatory note for significant subordinate legislation. The Queensland Treasury also monitors and reports on compliance with the gatekeeping arrangements.

Assessment

Queensland has a range of initiatives that contribute to new legislation being consistent with clause 5(5) of the CPA. These initiatives include the requirement to undertake public benefit analysis of all new (including amending) legislation that restricts competition. The state also has detailed guidelines to conduct public benefit analysis, in addition to the support mechanisms provided by the BRRU.

However, Queensland could enhance its processes in accordance with clause 5(5) in several areas.

First, there is no independent mechanism for advising government on the likely impact of proposed regulations. While the Queensland Treasury monitors compliance with regulatory best practice outcomes, it may be perceived as not being sufficiently separated from the policy development process. Second, the regulatory best practice requirements for primary legislation do not appear to be as rigorous as those for subordinate legislation, whereby RISs must be produced and made available on request.

Western Australia

Western Australia's *Public interest guidelines for legislation review* (Government of Western Australia 2001a) sets the mandatory requirements for all reviews. These guidelines require a RIS-type analysis (consistent with NCP requirements) to assess the costs and benefits of reform. The Expenditure Review Committee and Cabinet are required to formally endorse or reject the recommendations of such reviews of proposed legislation.

There is no independent statutory body with responsibility for overseeing the legislative gatekeeping requirements in Western Australia. However, the Competition Policy Unit within the Department of Treasury and Finance advises agencies on NCP obligations and encourages agencies to consider NCP principles at an early stage of preparing new law. Further, Western Australia's legislative process contains a mechanism to ensure the department is formally notified of progress on new legislation, so it can monitor agency compliance. If the department considers that a proposed new law has the potential to restrict competition, it liaises with the proponent agency to ensure the law is appropriately reviewed.

Assessment

Western Australia's legislation review processes are reasonably robust because a legislation review is required for all new primary and subordinate legislation that restricts competition. Key areas in which the state can improve compliance with best practice under clause 5(5) include:

- the introduction of an independent gatekeeping mechanism
- the introduction of a subordinate legislation Act (as in other jurisdictions) to formalise the scrutiny of proposed subordinate legislation and to increase transparency.

South Australia

On 23 April 2002, South Australia introduced a new process requiring all regulatory proposals for consideration by Cabinet to assess potential impacts on the community. The impacts to be assessed are regulatory, small business,

the environment, families and society and regions. In July 2003, the South Australian Government issued Premier and Cabinet Circular No 19, *Preparing Cabinet submissions* (Department of the Premier and Cabinet 2003), incorporating this initiative. These guidelines were revised in July 2004.

Under these requirements, any proposal that imposes nontrivial regulations on the community (including all new Acts, regulations, mandatory standards and codes, and amendments to existing legislation) must be accompanied by a RIS evaluating the proposal's effectiveness and efficiency (in terms of net public benefit) in achieving its objective, compared to non-regulatory means.

South Australia's *Reviewing restrictions on competition in proposed new legislation* (Department of the Premier and Cabinet 2001) states that best practice is to release publicly (subject to Ministerial approval) the evidence of a review of proposed new legislation. It also recommends that a reference to NCP issues be made in the second reading speech of a Bill, because the issues are then on the public record in an accessible form.

A separate regional impact assessment report must be attached to the Cabinet submission if there is a significant regional impact. It must also be lodged in Parliament and published.

The Department of the Premier and Cabinet's NCP Implementation Unit provides advice and training to agencies on NCP compliance. It also advises Cabinet on the adequacy of the RIS statements in Cabinet submissions.

An assessment of the adequacy of the impact assessments is published in the annual report of the Department of the Premier and Cabinet.

Assessment

The Council considers that South Australia's gatekeeping arrangements comply with NCP obligations. While the location of the NCP Implementation Unit within a central agency may create some perceptions of a lack of separation between policymaking and regulatory scrutiny, the Council considers that the Unit operates effectively within these constraints. In particular, the Unit regularly liaises with the Council about appropriate thresholds for compliance for proposed new legislation.

However, a key area where the state can enhance compliance with best practice principles is by enshrining the requirement to prepare RIS analysis for subordinate legislation in the state's *Subordinate Legislation Act 1978*.

Tasmania

Tasmania's mandatory new legislation gatekeeping requirements are detailed in the *Legislation review program — procedures and guidelines manual*

(Government of Tasmania 2003). Consistent with the CPA, the requirements apply to all (including new or proposed) primary legislation and all subordinate instruments, including regulations, rules, by-laws, orders, proclamations and notices made under the legislation. The CPA guiding principle is also made explicit to help guide the reviews.

As outlined in the manual, Tasmania requires departments and agencies to prepare a RIS for new or proposed primary legislation that has at least one major restriction on competition or will impose a significant negative impact on business. Where proposed primary legislation includes a major restriction on competition or impact on business, a rigorous and transparent assessment process is required to establish whether the restriction is justified in the public interest. A less intensive process is required when the proposed primary legislation includes a minor restriction on competition. The Regulation Review Unit (RRU), in consultation with the government agency responsible for the proposal, determines the need to conduct a major or minor assessment.

A major assessment requires preparation of a RIS and the conduct of public consultation. The RIS should be accessible to the general public and explain the objectives of the legislation, the issues surrounding the restriction(s) on competition (or the impact on business), and the benefits and costs that flow from the restriction or impact. Agencies must obtain the RRU's endorsement of the RIS and the proposed public consultation program before publicly releasing the RIS. For proposed minor restrictions on competition, government agencies are required to prepare a brief assessment commensurate with the relative impact of the legislation. The RRU's endorsement of the assessment is required before an agency submits its proposal to Cabinet.

The *Subordinate Legislation Act 1992* requires the preparation of a RIS for proposed subordinate legislation that imposes a significant cost, burden or disadvantage on any sector of the public. The RRU considers this requirement to include subordinate legislation that restricts competition. The Act also requires agencies to conduct public consultation.

Assessment

The Council considers that Tasmania's gatekeeping arrangements achieve best practice compliance with clause 5(5). Indeed, the requirement for the RRU to endorse proposals before Cabinet consideration appears to exceed similar processes operating at the federal level.

The only aspect of the state's gatekeeping processes where the state may consider enhancing its processes is to address any actual or perceived lack of independence of the RRU which is located within Treasury. Tasmania could address this issue by locating the unit within an independent statutory body, as has occurred at the federal level.

The ACT

The ACT Government's legislative gatekeeping mechanisms require that a RIS be prepared for proposals that restrict competition. The requirement applies to both primary and subordinate legislation.

In accordance with Cabinet requirements, government agencies must prepare a RIS for all new and amended primary legislation that restricts competition. This RIS must be attached to relevant Cabinet submissions.

For subordinate legislation, there is a statutory requirement to prepare a RIS if the subordinate law is likely to impose appreciable costs on the community or part of the community. These RISs must meet the same requirements applied to RISs for primary legislation.

The ACT has completed a review of its RIS process and, on 4 February 2004, released its *Best practice guide for preparing regulatory impact statements* (Government of the ACT 2003a) for departments. A key aspect of the guide is the requirement for agencies to consult with stakeholders and to include a consultation statement in the RIS. It also makes explicit reference to the clause 5(5) guiding principle.

For transparency and accountability purposes, the RIS for proposed subordinate legislation is tabled in the Legislative Assembly, along with the explanatory statement for the regulation. RISs for primary legislation that form part of the Cabinet submission are subject to Cabinet-in-Confidence provisions and are not released to the wider public.

The Microeconomic Reform Section of the Department of Treasury has responsibility for assisting departments and agencies to prepare RISs. It also assesses all submissions relating to legislative proposals, and advises Cabinet on its compliance with best practice regulatory requirements. Proposals do not receive Treasury endorsement if their associated RIS fails scrutiny of either its analysis or its content. Departments are also required to address Treasury concerns before their final submissions go to Cabinet for a decision.

Assessment

The Council considers that the ACT's gatekeeping arrangements provide for a range of mechanisms to improve the quality of new legislation and regulation. In particular, the requirement that the Treasury be satisfied of the rigour of RIS analysis may significantly improve the quality of proposed primary legislation and mitigate restrictions on competition.

Several areas in which the ACT can enhance its compliance with best practice processes include:

- enhancing the independence of the RIS assessment body, to avoid perceptions that the RIS assessor is not influenced by government policymaking considerations

- considering whether to make public an expurgated version of the final RIS for primary legislation to improve transparency of decision-making.

The Northern Territory

Following the introduction of new gatekeeping processes in June 2003, the Northern Territory now subjects all new legislation proposals (new Acts, amendments to existing Acts and new or amended regulations) that may restrict competition or confer significant costs on business to a competition impact analysis (CIA). The government has also published *Competition impact analysis principles and guidelines 2003* (Department of the Chief Minister 2003), which explains government agencies' obligations when preparing legislation that may restrict competition. The guidelines help agencies determine whether a CIA must be prepared. They also set out the principles and characteristics of good regulation, and encourage government agencies to make their CIAs available to the public.

The Northern Territory does not have a single statutory independent body responsible for the oversight of the gatekeeping process. Instead, the Department of the Chief Minister has prime responsibility for oversight of the competition impact analysis process. To assist in this task, it has established an interdepartmental committee comprising representatives from the department and the Department of Justice and the Treasury. The Department of Business, Industry and Resource Development is also represented on the committee when it has responsibility for regulatory proposals with the potential to restrict competition. The committee reviews the initial decision to prepare a CIA and coordinates feedback to the agency on the adequacy of the draft analysis. The Department of the Chief Minister provides a statement on whether the CIA process has been adequately completed. The government agency must submit the statement and CIA along with the draft legislation/regulation when seeking Cabinet or Executive Council approval. From 2004 there is also bi-annual reporting to the Chief Minister, the Treasurer and Chief Executives on agencies' compliance with the CIA process.

Assessment

The Council considers that the Northern Territory's gatekeeping arrangements are generally rigorous and robust compared with other jurisdictions, particularly in its requirements for proposed primary legislation.

Key areas in which the Northern Territory can enhance its gatekeeping processes consistent with best practice include:

- introducing a subordinate legislation Act (as in other jurisdictions) to formalise the scrutiny of proposed subordinate legislation and to increase transparency

- increasing the actual or perceived independence of the mechanism for regulatory scrutiny — for example, by replacing the interdepartmental committee with an independent organisation such as the ORR at the federal level.

Table 4.1: Gatekeeping arrangements for new legislation

Jurisdiction	*Formal regulatory impact assessment of new and amended primary legislation (Bills)*	*Formal regulatory impact assessment of subordinate legislation*	*Published guidelines for the assessment of the regulatory impact of new regulation*	*Guidelines embody the CPA clause 5 guiding principle*	*Independent oversight and reporting of gatekeeper arrangements*
Australian Government	A RIS must be prepared for all proposals that have a direct effect on business, have a significant indirect effect on business or restrict competition.	The requirements that apply to primary legislation also apply administratively to subordinate legislation.	A *Guide to Regulation* (second edition) published by the Office of Regulation Review in 1998 contains guidelines.	The CPA clause 5 requirements are specified in *A Guide to regulation*.	The Office of Regulation Review trains and guides departments and agencies on the RIS requirements. It reports annually on compliance.
New South Wales	Cabinet submissions for new Bills must meet best practice requirements.	Under the *Subordinate Legislation Act 1989*, a RIS is required for all new principal statutory rules, but not for any direct amendments to those rules.	From *Red tape to results* contains best practice guidelines, and the *Manual for preparation of legislation* details the requirements of the Subordinate Legislation Act.	*From Red Tape to Results* does not contain an explicit statement of the guiding principle, but it states that best practice requires regulatory systems to not restrict competition	No single statutory independent body has responsibility for overseeing the gatekeeping requirements. The Inter-Governmental and Regulatory Reform Branch in the Cabinet Office coordinates implementation of NCP and other regulatory reform initiatives. The Legislation Review Committee provides some scrutiny of Bills and broader scrutiny of subordinate legislation subject to disallowance according to the criteria set out in the *Legislation Review Act 1987*.

(*continued*)

Table 4.1 continued

Jurisdiction	*Formal regulatory impact assessment of new and amended primary legislation (Bills)*	*Formal regulatory impact assessment of subordinate legislation*	*Published guidelines for the assessment of the regulatory impact of new regulation*	*Guidelines embody the CPA clause 5 guiding principle*	*Independent oversight and reporting of gatekeeper arrangements*
Victoria	Cabinet submissions on legislative proposals must include an NCP impact assessment. The preparation of business impact statements for primary legislation will supplement this process.	Under the *Subordinate Legislation Act 1994*, a RIS is required for all regulation that imposes an appreciable economic or social burden on any sector of the public.	In 1996 Victoria issued *Guidelines for the application of the competition test to new legislative proposals*. The guidelines are to be updated to reflect the operation of VCEC.	Victorian guidelines specify the CPA clause 5 requirements.	VCEC — an independent body — provides advice on when and how to conduct RISs and business impact statements. It will report annually to the Treasurer, including on compliance with regulatory requirements.
Queensland	All new primary legislation is subject to a public benefit test to ensure it complies with the CPA Clause 5 guiding principle.	A RIS is required for all new or amended subordinate legislation that is likely to impose 'appreciable costs on business and/or the community'.	Queensland Treasury publishes *Public benefit test guidelines.*	The public benefit test explicitly considers the CPA guiding principle.	The BRRU provides assistance and training to agencies on RIS requirements.
Western Australia	All legislation that restricts competition must be reviewed.	Legislation review requirements extend to regulations, rules, proclamations, notices, new legislation, amended legislation and local government by-laws	Western Australia's *Legislation review guidelines* and *Public interest guidelines for legislation review* set out the mandatory requirements for reviews of existing, new and amending regulation.	The guidelines make clear Western Australia's CPA obligations.	The Department of Treasury and Finance advises agencies on NCP obligations and must be formally informed of progress on new legislation. The department may present its advice to the Cabinet directly if it considers that the agency proposing the new legislation has not appropriately addressed NCP issues.

(*continued*)

Table 4.1 continued

Jurisdiction	*Formal regulatory impact assessment of new and amended primary legislation (Bills)*	*Formal regulatory impact assessment of subordinate legislation*	*Published guidelines for the assessment of the regulatory impact of new regulation*	*Guidelines embody the CPA clause 5 guiding principle*	*Independent oversight and reporting of gatekeeper arrangements*
South Australia	All proposals for new and amending legislation must be accompanied by evidence that the proposal complies with CPA clause 5 requirements.	All proposals for new and amending regulations must be accompanied by evidence that the proposal complies with CPA clause 5 requirements.	South Australia's guidelines for primary and subordinate legislation are embodied within *Preparing Cabinet submissions* and *Reviewing restrictions on competition in proposed new legislation*.	The guidelines make clear South Australia's CPA obligations.	The Department of Premier and Cabinet provides advice and training to agencies on NCP compliance.
Tasmania	A RIS is required for new Bills assessed by the RRU to contain a major restriction on competition.	A RIS is required for subordinate legislation that imposes a significant cost, burden or disadvantage on any sector of the public.	Tasmania's guidelines are in the *Legislation review program procedures and guidelines manual* and the *Subordinate Legislation Act 1992: Users Guide*.	The manual requires agencies to apply the NCP tests.	The RRU assesses all proposed legislation. It provides training and advice to agencies and annually reports on compliance.
ACT	A RIS must be attached to Cabinet submissions for all legislative proposals that restrict competition.	A RIS must be prepared for all subordinate legislation that imposes an appreciable burden on business.	The *Guide to Regulation in the ACT.*	The guide refers agencies to the NCP tests.	The Microeconomic Reform Section of the Department of Treasury has responsibility for assisting departments and agencies in the preparation of a RIS.

(*continued*)

Table 4.1 continued

Jurisdiction	*Formal regulatory impact assessment of new and amended primary legislation (Bills)*	*Formal regulatory impact assessment of subordinate legislation*	*Published guidelines for the assessment of the regulatory impact of new regulation*	*Guidelines embody the CPA clause 5 guiding principle*	*Independent oversight and reporting of gatekeeper arrangements*
Northern Territory	All draft Bills must be accompanied by a competition impact analysis.	All draft regulations must be accompanied by a competition impact analysis.	The Department of the Chief Minister has published the *Competition impact analysis principles and guidelines 2003*.	The guidelines refer agencies to the CPA tests as principles of good regulation.	There is no independent statutory authority responsible for oversight of the competition impact analysis process. The Department of the Chief Minister has prime responsibility for the gatekeeping arrangements. It is assisted by an interdepartmental committee comprising representatives from the department and from the Department of Justice and the Treasury. The Department of Business, Industry and Resource Development is also represented on the committee when it has responsibility for regulatory proposals with the potential to restrict competition.

5 The Conduct Code and Implementation Agreements

Conduct Code Agreement

In addition to obligations in the Competition Principles Agreement (CPA), National Competition Policy (NCP) commitments aim to improve the effectiveness of regulation in the Conduct Code Agreement. Clause 2(1) of the Conduct Code Agreement requires all governments to notify the Australian Competition and Consumer Commission (ACCC) of legislation or provisions in legislation that rely on s51(1) of the *Trade Practices Act 1974* (the TPA) within 30 days of the legislation being enacted or made.

Section 51(1) of the TPA provides that conduct that would be an offence under the Act's restrictive trade practices provisions may be permitted if authorised under a federal, state or territory Act. As such, legislation that is relevant to clause 2(1) of the Conduct Code Agreement is new legislation restricting competition, so it needs to satisfy the tests in clause 5 of the CPA.

Each of the National Competition Council's NCP assessment reports list the legislation relevant to clause 2(1) that governments enacted since the previous assessment, along with the date of notification to the ACCC. Since the 2003 NCP assessment was prepared, several governments have enacted legislation relying on s51(1) of the TPA.

Australian Government

- Payment Systems (Regulation) Regulations 2003, notified prior to 1 July 2003 (the date of commencement of the Regulations)

New South Wales

- *Wine Grapes Marketing Board (Reconstitution) Act 2003*, notified on 30 June 2004
- *Marketing of Primary Products Amendment (Rice Marketing) Act 2003*, notified on 30 June 2004

- *Industrial Relations Amendment (Public Vehicle and Carriers) Act 2003*, notified on 30 June 2004

Victoria

- *Health Legislation (Further Amendment) Act 2003*, notified on 9 July 2004
- *Outworkers (Improved Protection) Act 2003*, notified on 9 July 2004

Queensland

- *Sugar Industry Reform Act 2004*, notified in late September 2004

Western Australia

- *Electricity Industry Act 2004* — Electricity Industry (Wholesale Electricity) Regulations 2004, notified on 14 October 2004

South Australia

- *Chicken Meat Industry Act 2003*, notified on 12 August 2003

The ACT

- The ACCC reported that the ACT's *Health Amendment Act 2003* had introduced an exception to the TPA in the *Health Act 1993*, but the ACT did not notify the ACCC of the exception

Northern Territory

- *Consumer Affairs and Fair Trading Amendment Act 2004*, notified on 15 April 2004.

Implementation Agreement

The Agreement to Implement the National Competition Policy and Related Reforms (the Implementation Agreement) sets conditions for the provision of third tranche NCP payments. Among other matters, it obliges governments to ensure Ministerial councils and intergovernmental standard-setting bodies set national regulatory standards in accord with principles and conditions endorsed by the Council of Australian Governments (CoAG). It also obliges Ministerial councils, national standard-setting bodies and governments to

seek advice from the Australian Government's independent Office of Regulation Review (ORR) on compliance with these principles and guidelines. The national standard-setting obligation is a collective responsibility of all governments.

Accordingly, CoAG's principles and guidelines:

- set out a consistent process for Ministerial councils and intergovernmental standard-setting bodies to determine whether associated laws and regulations are appropriate

- describe, where regulation is warranted, the features of good regulation and recommend principles for setting standards and regulations.

If a Ministerial council or intergovernmental standard-setting body proposes to agree to a regulatory action or adopt a standard, then it must first certify that a regulatory impact statement (RIS) has been completed and that the RIS analysis justifies adoption of the regulatory measure. The RIS must:

- demonstrate the need for the regulation

- detail the objectives of the measures proposed

- outline the alternative approaches considered (including nonregulatory options) and explain why they were not adopted

- document which groups benefit from regulation and which groups pay the direct and indirect costs of implementation

- demonstrate that the benefits of regulation outweigh the costs

- demonstrate that the regulation is consistent with relevant international standards (or justify any inconsistencies)

- set a review or sunset date for regulatory instruments (CoAG 1997).

The RIS process must be open and public. The RIS forms part of the community consultation and helps to inform standard setting. The ORR advises Ministerial councils and standard-setting bodies whether a draft RIS is consistent with CoAG principles and guidelines. It also reports to Heads of Government (through the CoAG Committee on Regulatory Reform) on Ministerial councils' and intergovernmental standard-setting bodies' significant decisions that it considers are inconsistent with the CoAG guidelines. In addition, it reports to the CoAG Committee on Regulatory Reform annually on overall compliance with the regulatory practice guidelines.

The ORR reports annually to the Council on the adherence of Ministerial councils and national standard-setting bodies to the standard-setting obligation. The ORR's report for the period 1 April 2003 to 31 March 2004 is reproduced in appendix A. It reveals that 30 of the 34 decisions by Ministerial councils and intergovernmental standard-setting bodies reported during the

year to 31 March 2004 satisfied CoAG requirements. The compliance rate of 88 per cent was similar to the 89 per cent rate in the previous year, but lower than the 96 per cent achieved in the 12 months to 31 March 2002.

Of the 34 decisions reported over the year to 31 March 2004, the ORR considered seven to be more significant than others, based on the nature and magnitude of the problem and the regulatory proposals for addressing it, and the scope and intensity of the proposals' impacts on the affected parties and the community. Three of these seven decisions did not comply with CoAG's RIS requirements:

- the endorsement by the Environment Protection and Heritage Council of the Australian Retailers' Association's code of practice for the management of plastic bags
- the agreement by the Ministerial Meeting on Insurance Issues on a national model for proportionate liability
- the endorsement by the Standing Committee of Attorneys-General of model provisions for consistent regulation across jurisdictions of the legal profession.

The ORR reported that the following factors have contributed to noncompliance.

- Some Ministerial councils and national standard-setting bodies have not understood the analytical requirements of a CoAG RIS or have not incorporated CoAG's regulatory best practice into their operating protocols.
- The allocation of decision-making power to ad hoc groups risks those groups not following best practice because they are not fully aware of CoAG's requirements. However, some instances of noncompliance involve Ministerial councils or standard-setting bodies that have made other decisions (during the same period) that met CoAG's requirements.
- Some decisions to regulate have been made in stages.

The rate of jurisdictions' adherence to CoAG's requirements for preparing RISs has not improved over the most recent 12-month period. The Council is concerned that some decision-makers did not prepare a RIS despite apparently knowing CoAG's requirements, as indicated by their adherence to the requirements when making other regulatory decisions. The Council encourages Ministerial councils and intergovernmental standard-setting bodies to adhere to the CoAG approach in making all regulations.

6 Electricity

Background

State and territory governments' electricity commitments under the National Competition Policy (NCP) arise from the Agreement to Implement the National Competition Policy and Related Reforms, the Competition Principles Agreement (CPA) and other agreements on related reforms for the electricity sector (electricity agreements). The CPA commitments relating to structural reform and legislation review are relevant to all jurisdictions, while the electricity agreements apply specifically to jurisdictions that are part of the national electricity market (NEM): New South Wales, Victoria, Queensland, South Australia and the ACT. The commitments are also relevant to Tasmania, which intends to enter the NEM in May 2005. The Australian Government is also a party to the agreements.

National Electricity Market jurisdictions

The cornerstone of the agreed reforms under the electricity agreements is a commitment to establish a fully competitive NEM. While considerable progress has been made towards achieving a fully competitive NEM, the Council's past NCP assessments, the CoAG Energy Market Review (2002) (known as the Parer Review), CoAG, the Ministerial Council on Energy and the NEM Ministers' Forum have identified deficiencies in the electricity market. The Council noted in its 2003 NCP assessment that a coordinated approach by governments is required to most effectively address these market deficiencies, and that the Council would consider such an approach as part of its 2004 NCP assessment.

Other NEM-wide issues for consideration by the Council are jurisdictions' progress in meeting commitments in relation to derogations from the National Electricity Code and commitments to maximise the potential for competition in electricity retail markets. In addition, a number of governments have outstanding commitments in relation to particular reform measures - namely:

- New South Wales — the Electricity Tariff Equalisation Fund (ETEF)

- Queensland — full retail contestability and the Benchmark Pricing Agreement
- the Northern Territory and the ACT — legislation review and reform
- South Australia — inconsistent intra-NEM approval arrangements
- Tasmania — entry into the NEM.

Each of these specific areas is considered below.

National Electricity Market reform

The Parer Review identified significant deficiencies in Australian electricity markets and made recommendations to address these deficiencies. The major findings and recommendations related to the industry's governance arrangements, market structure, transmission and interconnection, financial contract markets and demand-side participation concerns. The Council noted in its 2003 NCP assessment that all of the Parer Review's findings on the electricity sector relate to the general NCP commitment to establish a fully competitive NEM.

In December 2003, the Ministerial Council on Energy reported to CoAG its response to the findings and recommendations of the Parer Review, together with its reform policy objectives and recommendations. It agreed with the Parer Review's findings that substantial progress on energy market reform has been made in Australia and that significant benefits have arisen from that reform. It also concurred with the Parer Review findings that substantial policy issues remain to be resolved if the full benefits of market reform are to be realised. The Ministerial Council on Energy considered that a second phase of market reform is required (involving a coordinated response from governments) to capture those benefits.

It concluded that further reform should be undertaken to:

- strengthen the quality, timeliness and national character of governance of the energy markets, to improve the climate for investment
- streamline and improve the quality of economic regulation across energy markets, to lower the cost and complexity of regulation facing investors, enhance regulatory certainty and lower barriers to competition
- improve the planning and development of electricity transmission networks, to create a stable framework for efficient investment in new (including distributed) generation and transmission capacity
- enhance the participation of energy users in the markets, including through demand-side management and the further introduction of retail

competition, to increase the value of energy services to households and business

- further increase the penetration of natural gas, to lower energy costs and improve energy services (particularly in regional Australia) and reduce greenhouse emissions

- address greenhouse emissions from the energy sector, in the light of concerns about climate change and the need for a stable long term framework for investment in energy supplies.

The following are key elements of the reform package that the Ministerial Council on Energy recommended to CoAG, as they relate to the electricity sector:

- *Governance* — subsume the NEM Ministers' Forum within the Ministerial Council on Energy, thereby establishing a single energy market governance body.

- *Economic regulation* — establish two new statutory commissions. The Australian Energy Market Commission (AEMC) will be responsible for rule-making and market development, and the Australian Energy Regulator (AER) will be responsible for market regulation. Initially covering electricity wholesale and transmission for the NEM, the responsibilities of the AEMC and AER will broaden to include gas transmission from 2005. By 2006, the AER will be responsible for regulating distribution and retailing (other than retail pricing), following the development of an agreed national framework.

- *Electricity transmission* — develop, implement and progress a new NEM transmission planning function, a regulatory test for transmission and a process for assessing wholesale market regional boundaries in 2004. Interregional financial trading arrangements are to be evaluated, and the review of transmission pricing arrangements is to be concluded for implementation in 2004.

- *User participation* — ensure jurisdictions in which full retail competition is operating align their retail caps with costs and periodically review the need for price caps. The Ministerial Council on Energy did not stipulate a date for the implementation of these reforms. It is to examine options for a demand-side response pool in the NEM and consider the costs and benefits of introducing interval metering.

Jurisdictions are sharing responsibilities for further developing and implementing of reform initiatives. Since December 2003 a significant number of public consultations have been held on the key reform initiatives. Legislation establishing the AER was passed through the Australian Parliament in June 2004. Legislation to establish the AEMC was passed through the South Australian Parliament in June 2004 but has yet to be applied in other jurisdictions.

The Council welcomes the Ministerial Council on Energy's commitment to progressing electricity sector reform. The Ministerial Council on Energy recommendations demonstrate an apparent willingness to address many of the market deficiencies highlighted in the Parer Review.

The Council noted in its 2003 assessment that many of the deficiencies in the electricity market identified by the Parer Review related to existing NCP reform commitments. The Ministerial Council on Energy reform program seeks to address these deficiencies in a coordinated and comprehensive manner.

There are a number of specific NCP commitments that remain outstanding which are considered in this assessment. These are discussed below.

Retail market competition

The Parer Review discussed the importance of demand-side participation to the effective operation of the NEM. It noted the low level of demand-side involvement in the NEM, attributing it to demand inelasticity and consumers not facing cost-reflective retail prices. The review recommended the implementation of full retail contestability, the removal of price caps, a mandated interval meter roll-out and the introduction of pay-as-bid mechanisms to manage demand.

The Council considers the introduction of full retail contestability to be an essential component of the electricity reforms. It expressed this view in all previous NCP assessments of jurisdictions' compliance with the specific electricity commitments. Further, the Council notes that regulatory oversight of retail tariffs should be only a transitional arrangement and should cease when competition is sufficiently developed in retail markets.

The level of regulated tariffs for franchise customers is an important issue. If the level is set too low relative to underlying costs, it will impact on the development of competition in retail and generation. Further, if the regulated tariff is not cost reflective, new retailers cannot compete for franchise customers. These factors can combine to reduce scale economies for new entrants, increasing their costs and making it more difficult for them to compete.

In its December 2003 report to CoAG, the Ministerial Council on Energy recognised the importance of demand-side participation in achieving effective competition and maximising the benefits of market reform. It supports the further introduction of retail competition across the NEM, but guided by local circumstances and the need to protect consumers. The Ministerial Council on Energy recommended that in all jurisdictions in which full retail contestability is operating, retail price caps should be aligned with costs, and the need for the price caps should be reviewed periodically. It stated that it would examine the establishment of a demand-side response pool in the

NEM. The Ministerial Council on Energy released a policy statement for user participation in August 2004.

The recommendations that retail price caps be aligned with costs and that the need for the caps be reviewed periodically are positive steps toward enhancing competition. The Council notes, however, that the Ministerial Council on Energy is not undertaking any reform program in relation to such issues but rather is focusing its retail market reform enquiries on user participation issues such as demand-side response pools and metering. The Ministerial Council on Energy did not commit to a date for implementing reforms of retail price caps although it has referred the matter to the AEMC for consideration once it is established.

All NEM jurisdictions other than Queensland have introduced full retail contestability while maintaining some form of regulatory prices oversight while markets are in transition to effective competition. The form of the regulatory pricing oversight and its potential impact on competition differs across each jurisdiction.

The Council considers it appropriate that decisions to extend retail price controls require the support of independent reviews as in New South Wales, South Australia and Victoria. Further, it is desirable that an independent regulator investigate and determine regulated tariffs as in New South Wales, South Australia and the ACT. In Victoria, the government has a reserve pricing power, although consultation with the state independent regulator has been usual. In Queensland, the government continues to determine regulated tariffs.

Community service obligations need to be delivered in a transparent and competitively neutral manner and not create barriers to entry for new retailers. Each NEM jurisdiction has rebate schemes intended to increase the affordability of electricity to particular sectors of the community, including pensioners, low income earners and those on life support systems. The government pays these rebates to either customers directly or retailers on behalf of customers. Provided rebates to retailers are paid in a competitively neutral manner, this rebate delivery method is transparent and does not distort competition in the retail market.

New South Wales and Queensland have mechanisms in place to manage the government's risk to fluctuating wholesale prices against the need to deliver uniform retail tariffs. These mechanisms are discussed in detail below.

New South Wales

In New South Wales, following a ministerial reference in September 2003, the Independent Pricing and Regulatory Tribunal (IPART) determines the regulated retail tariff for small customers supplied under a standard form contract. Retailers are required to comply with the IPART tariff determination as a condition of their retail licences.

The New South Wales Government stated in its 2004 NCP annual report that it has a policy aim of reducing customers' reliance on regulated prices and that it views them as a transitional measure. In December 2003 it decided to extend the regulatory arrangements underpinning the regulated tariffs until 30 June 2007, on the basis that the retail market was not sufficiently competitive to protect the interests of small customers. The following factors were germane to the government's decision:

- The gradual introduction of competition has been demonstrably successful (notwithstanding the existence of regulated tariffs) with around 560 000 small energy customers accepting contestable supply terms and the number of retailers increasing since the start of full retail contestability.
- The regulated tariff has provided an essential consumer protection during the transition to full competition and should continue, given that a competitive market is still developing.
- Interjurisdictional discussions on the reform of energy market governance and regulatory arrangements are ongoing.
- The government considers regulated tariffs to be the most transparent transitional arrangement available, following an evaluation of alternative means to protect consumers.

In April 2004 IPART released its draft determination on electricity retail tariffs for the period 1 July 2004 to 30 June 2007. On behalf of IPART, PricewaterhouseCoopers conducted an independent analysis of the competitive offers available in the market. It concluded that competition is developing for small customers in New South Wales but cannot yet be considered effective.

In addition to extending the arrangements supporting regulated tariffs, the New South Wales Government extended the operation of the ETEF (discussed in detail below) until 30 June 2007.

The New South Wales Government also provides an energy rebate to eligible pensioners and those people who need to use a life support machine, such as dialysis. The rebate is made available through all New South Wales retailers.

Victoria

The Victorian Government can, under its reserve pricing powers, override the franchised customer tariffs set by retailers. It is not required to refer the matter to an independent regulator, such as the Essential Services Commission for consideration before exercising its right of intervention. It has, however, sought the views of the Essential Services Commission in the past.

In its 2004 NCP annual report, the Victorian Government has stated that its 'goal is to have energy prices set by the market rather than regulation'. It has

noted that it does not automatically exercise its reserve pricing power to constrain retailers' standard prices and that it has done so only where it has concluded that 'market power is being exercised and proposed retailer pricing was not justified'.

In December 2003 the Victorian Government announced a voluntary agreement with the privately owned energy retailers to lock in a pricing structure for four years. In its 2004 NCP annual report, it stated that the intent of the arrangement is to provide price certainty for Victorians, to strike a balance between protecting customers and ensuring a viable electricity industry, and to enable the continued progress of retail competition.

In June 2004 the Essential Services Commission released a report on the effectiveness of retail competition and the consumer safety net in gas and electricity. It concluded that competition is likely to become effective for a much larger proportion of small energy customers in the next few years. Until such time, residential customers in particular, should continue to have access to the minimum protections afforded by the retail code and a retail price benchmark such as that provided by the standing offer price arrangements. It further concluded that competition in the retail market overall, has developed such that a gradual rollback, and potentially the elimination, of retail price regulation should be considered. The Victorian Government is yet to respond to the commission's report, although it has stated that the need for continuing prices oversight will be assessed in light of the Essential Services Commission's final report and recommendations.

Victoria has a number of community service obligation schemes for electricity, including a network tariff rebate (which is intended to close the gap between electricity prices paid by country and city areas through the government's payment of a rebate to retailers on behalf of customers) that commenced on 1 April 2003. In addition, the Government provides a range of energy concessions and relief grants for electricity to low income groups, to help address fuel poverty.

Queensland

Queensland has not introduced full retail contestability, although larger customers are contestable. From 1 July 2004 contestability was extended from the current threshold of customers using more than 200 megawatt hours per year to include those using more than 100 megawatt hours per year.

The Minister determines electricity retail prices for non-contestable customers charged by the three retailers operating in Queensland (ENERGEX, Ergon Energy and Country Energy). Customers within a particular class pay the same tariff across the state. In addition, the tariff structure includes special conditions for customers who are farmers in a drought declared area or whose properties are individually drought declared.

Other community service obligations include electricity rebates to eligible pensioners and seniors (administered by the franchise retailers on behalf of the Department of Communities), and to those on home based life support machines (administered directly by the Department of Communities).

South Australia

Full retail contestability commenced in South Australia on 1 January 2003. As part of the consumer protection measures introduced to support the introduction of contestability, the South Australian Government conferred retail pricing powers on the Essential Services Commission of South Australia. The commission has the power to require that retailers justify any price increases for small customers on regulated tariffs, and it has reserve powers to cap such retail prices if it considers that electricity tariffs are excessive and unjustifiable. Further, the Electricity Act introduced the concept of a standing contract, which applied to small customers (those consuming less than 160 megawatt hours) unless they elect to transfer to a market contract.

Initially the standard contract provisions were to apply until July 2005, by which time the government will have undertaken a review of the effectiveness of the provisions and their continuing need. Following a review by IPART in March 2004 into the methodology used by the Essential Services Commission of South Australia (ESCOSA) in setting the standard contract price, the government has amended the standing contract provisions to implement a three year price path. ESCOSA is required to undertake a comprehensive public inquiry prior to setting the prices for the subsequent three years. Further, the government has extended the expiry date for the standing contract provisions from 1 July 2005 to a date to be fixed by proclamation.

To date, customer transfer numbers published by ESCOSA, indicate that small customers are increasingly taking advantage of retail competition with around 100,000 of the total small customer base of 740,000 having transferred (or in the process of transferring) to market contracts.

Retailers licensed to operate in South Australia are required to comply with the government's energy concession scheme. This requires retailers to deduct the concession amount from an eligible customer's account. The reduced amount is paid by the customer directly to the retailer with the amount of the concession then reimbursed by the government.

The government also developed a scheme offering a one-off $50 electricity transfer rebate to energy concession recipients who switched from the standard contract to a market contract before 13 August 2004. Approximately 75,000 customers have taken advantage of the rebate.

The ACT

The ACT introduced full retail contestability on 1 July 2003. The ACT Government announced that it will allow a three-year transition period during which customers can remain with their existing supplier, ActewAGL Retail on a regulated tariff. The Independent Competition and Regulatory Commission determines the regulated tariff for franchise customers. In May 2003 the commission issued its final determination on retail prices for franchise customers and this determination will be in force until 30 June 2006. The ACT Government has advised the Council in its 2004 NCP annual report that the ACT Government will re-assess the continued need for the arrangements after the retail determination expires.

Electricity sector community service obligations under the ACT Concessions Program are delivered via a direct customer rebate. Rebates are payable to customers groups including pensioners and those on life support systems.

Specific outstanding assessment issues

New South Wales

The Electricity Tariff Equalisation Fund

In its 2003 NCP assessment, the Council detailed the nature of the ETEF in New South Wales. It concluded that the operation of the ETEF is likely to reduce liquidity in the financial and physical hedged market, which may increase the price of such financial instruments and increase the costs for other retailers, raising barriers to retail market entry. This view mirrors that expressed by the Parer Review.

New South Wales disputed these findings, arguing that the ETEF is a transparent mechanism through which the government delivers a community service obligation to price regulated electricity customers. Further, it stated that the ETEF was a transitional measure that was due to expire in July 2004, and that it would then examine the continued need for such an arrangement.

The New South Wales Government reviewed the continuing need for the regulated tariff and decided that the tariff should continue to apply until 30 June 2007. It stated in its 2004 NCP annual report that the decision to extend the application of the regulated tariff 'necessitated the continuation of the ETEF until 30 June 2007', and that the decision to extend the operation of the ETEF followed an examination of other options for minimising the risk to retailers. These options included the re-introduction of vesting contracts, the requirement that standard retailers buy electricity for regulated customers on behalf of the government and various market based processes. The

government's review of the ETEF built on an earlier review in 2001. The government concluded that there had been no developments that justified the move to a different risk management mechanism on the basis of greater effectiveness and efficiency. As such, it concluded that the ETEF should remain in place.

In relation to the effect of the ETEF on competition, the New South Wales Government has argued that there is no evidence that the ETEF has reduced energy related financial market trading activity. The Council previously considered in the 2003 NCP assessment the evidence in the state's 2003 NCP annual report. No new evidence has been submitted to the Council such that it needs to reconsider its conclusion that the ETEF is likely to reduce liquidity in the financial and physical hedged market.

The Council continues to be concerned about the extent to which the ETEF arrangements raise barriers to entry to new generation and adversely affects emerging retail competition. The Council considers the ETEF arrangements should be further considered within the context of the Ministerial Council on Energy retail market reform program.

Queensland

Full retail contestability

In the 2003 NCP assessment, the Council determined that Queensland had failed to meet its NCP obligation to introduce full retail contestability in electricity. Queensland agreed to consider the early introduction of contestability for customers consuming 100–200 megawatt hours per year (tranche 4A) and to undertake a further review of full retail contestability. The Council recommended a suspension of 25 per cent of Queensland's competition payments (10 per cent related to tranche 4A and 15 per cent related to the outcome of the wider review of full retail contestability).

In February 2004 the Queensland Government announced the extension of retail competition to tranche 4A customers. Contestability for tranche 4A customers commenced on 1 July 2004.

Queensland, however, has yet to complete the review of the costs and benefits of full retail contestability in accordance with its 2003 commitment. The government has commenced the review process by drafting terms of reference and engaging a consultancy firm to undertake the review. The government estimates that the review will be completed by the end of 2004, with a decision on the introduction of full retail competition anticipated in early 2005.

Consistent with the 2003 assessment, the Council considers that the Queensland government's decision to date, to not introduce full retail contestability, is in breach of its electricity commitments. The Council notes

that Queensland will reconsider this decision following the 2004 review. The Queensland Government's response to this review will be considered by the Council in its 2005 assessment.

The benchmark pricing agreement/long term energy procurement

In its 2003 NCP assessment, the Council considered the nature of the benchmark pricing agreement in Queensland, in light of the Parer Review concerns about the agreement's competitive effect. Queensland has advised the Council that the agreement is an example of an energy procurement arrangement designed to ensure retailers purchase wholesale electricity to supply the franchise customer load on a commercial and efficient basis. Queensland has introduced a new energy procurement arrangement referred to as long term energy procurement (LEP).

Under the LEP, the government benchmarks contracts purchased by the retailers supplying franchise load against a range of publicly available and retailer-specific data to ensure the retailers' contracts are efficiently priced. Risk is transferred to the retailers for exposure to the wholesale pool, thereby placing incentives on the retailers to actively manage pool price outcomes.

The LEP requires the retailers to enter the financial market and secure contracts for risk mitigation purposes (or face potential losses from remaining unhedged). Queensland has argues that the energy procurement arrangement supports the development of wholesale contract market mechanisms because it requires the retailer to bid for financial contracts and encourages generators to offer contracts, reinforcing and enhancing the underlying liquidity in the market. The arrangement is competitively neutral in that the retailer can choose its preferred counterparty, irrespective of whether that counterparty is government or privately owned.

In essence, the government negotiates a supply contract with retailers on behalf of the franchise load. The arrangement focuses on benchmarking of contracts and attempts to replicate outcomes that would occur in an effectively competitive market. The actual purchasing and hedging of energy remain the sole responsibility of the retailers.

The Council does not consider that the LEP has an anticompetitive effect. The continued need for such an arrangement will be dependant on the introduction of full retail contestability and the role of regulated retail tariffs. These issues will be considered by the Ministerial Council on Energy in the context of its retail market reform program.

South Australia

Licensing arrangements

In its 2003 NCP assessment, the Council expressed continuing concern about the potential for overlap between the NEM regulatory processes for new interconnects and South Australia's licensing requirements for new transmission companies. This issue arose in the context of the SNI interconnect project, which was approved through NEM regulatory processes but also subject to a customer benefits test under South Australian licensing arrangements.

As discussed, the Ministerial Council on Energy's reform program provides for the harmonisation of regulatory arrangements across jurisdictions. A single national energy regulator (the Australian Energy Regulator) and rule making body (the Australian Energy Market Commission) are scheduled to commence operation by the end of 2004. Implementation of the new governance arrangements and regulatory harmonisation will likely address regulatory inconsistencies such as that encountered in the SNI interconnect project.

Tasmania

National Electricity Market participation

Tasmania is scheduled to enter the NEM on 29 May 2005. Basslink is scheduled to be commissioned in November 2005. To facilitate Tasmania's entry into the NEM, a suite of structural and regulatory arrangements have been developed. Key milestones that have been achieved to date include:

- the Australian Competition and Consumer Commission's authorisation of the proposed NEM entry transition arrangements
- the formalisation of arrangements with the existing NEM jurisdictions for Tasmania to become a participating jurisdiction
- membership of the National Electricity Code Administrator (NECA) and the National Electricity Market Management Company Limited (NEMMCO)
- the passing of legislation required to adopt the National Electricity Law and apply the National Electricity Code in Tasmania;
- amendment of the *Electricity Supply Industry Act 1995* (see below for details)

- memoranda of understanding between the Tasmanian Government, the state-owned electricity businesses and NEMMCO that govern the NEM entry process.

The *Electricity Supply Industry Act 1995* was amended in April 2003 to establish the framework required to facilitate Tasmania's entry to the NEM and provide for the introduction of retail contestability over four years, commencing six months after Basslink is commissioned. The reform legislation introduced a suite of structural and regulatory arrangements, including:

- transferring certain functions and powers in relation to transmission pricing from the Office of the Tasmanian Energy Regulator to the ACCC

- formalising the appointment of the Office of the Tasmanian Energy Regulator as the state's jurisdictional regulator under the National Electricity Code

- establishing a head of power to enable the development of detailed arrangements for the introduction of retail competition in Tasmania

- enabling Transend Networks, as system controller, to enter into agreements with NEMMCO which will enable NEMMCO to perform the system controller functions in Tasmania.

Tasmania has obtained authorisation from the ACCC for a number of derogations to the National Electricity Code to accommodate the transitional entry into the NEM. The derogations include vesting contract arrangements between Aurora Energy and Hydro Tasmania covering non-contestable customer load. The derogations are due to expire two years after Tasmania enters the NEM.

In relation to retail contestability, Tasmania proposes that the first tranche — covering around 19 customers consuming in excess of 20 gigawatt hours per year — will be introduced on 1 July 2006. The remaining stages are scheduled to occur at annual intervals, with full retail contestability scheduled from 2010 following a positive cost–benefit assessment. Table 6.1 sets out the timetable for retail competition.

Table 6.1: Tasmania's retail contestability timetable

*Introduction of contestability**	*Electricity consumption (Gigawatt hours per year)*	*Approximate number*	*Indicative customer type*
1 July 2006	20	10	Mineral processors
1 July 2007	4	54	Large industrial facilities and commercial complexes
1 July 2008	0.75	295	Medium factories and smaller commercial complexes
1 July 2009	0.15	1030	Small factories and large offices
1 July 2010	Less than 0.15	230 000	Small business and domestic customers

*Dates are subject to completion of Basslink in late 2005.

The Council is satisfied with Tasmania's progress in implementing measures to participate in the NEM. While a number of measures have yet to be implemented, progress suggests that Tasmania, once Basslink is commissioned, will be at least substantially ready to participate in the NEM. The Council will assess further progress in its 2005 NCP assessment.

The ACT

Legislation review and reform

At the time of the 2003 NCP assessment, the ACT had one outstanding legislation review matter relating to electricity. That matter has now been addressed with the enactment of the *Construction Occupations (Licensing) Act 2003* on 11 March 2004.

Code derogations

In its 2003 NCP assessment, the Council expressed concern that derogations from the National Electricity Code could fragment the NEM, reducing its effectiveness and limiting the scope for competition. For this reason, derogations to the code are warranted only when necessary to provide a smooth transition to the NEM or when related to unique characteristics within a particular jurisdiction — for example, derogations relating to Tasmania's entry into the NEM, metrology procedures following the introduction of full retail contestability, and recognition of the separation of transmission ownership and operation in Victoria.

Derogations must be authorised by the ACCC, which assesses the public benefit against the likely competitive detriment under the *Trade Practices Act*

1974. In applying this test, the ACCC considers not only the public interest associated with the particular derogation, but also the competitive impact of the derogation on the NEM as a whole. The Council considers that the broad focus of the ACCC's authorisation test provides a satisfactory balance between the need for flexibility in dealing with transitional arrangements and the broader need for consistency to facilitate competition within the NEM.

Non-National Electricity Market jurisdictions

As outlined, the CPA commitments relating to structural reform and legislation review are relevant to Western Australia's and the Northern Territory's electricity sectors.

Western Australia

In its 2003 NCP assessment, the Council noted that the Western Australian Government had endorsed all of the recommendations of the independent Electricity Reform Task Force, including the indicative reform timetable. The agreed program and timetable included:

- the vertical disaggregation of Western Power into generation, networks (transmission and distribution) and retail entities, and the establishment of a fourth entity, the Regional Power Corporation, with responsibility for electricity supply in the north west interconnected system and Western Power's non-interconnected systems, by 1 July 2004

- the establishment of a bilateral contracts market with an associated residual trading market

- the mitigation of Western Power's generation market power through the auctioning of its capacity, a requirement that it participate in the residual trading market, and restrictions on its ability to invest in new or replacement fossil fuelled generation plant

- the retention of uniform tariffs and retail price caps

- the implementation of retail contestability for all customers above 50 megawatt hours per year from 1 January 2005, then full implementation once the other reforms have been completed

- the development of an electricity access code (to be administered by an independent regulator) by 1 January 2004 and the operation of the new access framework and licensing regime by 1 January 2005.

The *Electricity Industry Act 2004* was passed on 8 April 2004 and the *Electricity Legislation Amendment Bill 2004* on 23 September 2004. The legislation implements many of the reform initiatives to which the government has committed. In particular, it contains provision for the development of a wholesale market for the South West Interconnected System, an independent licensing regime for electricity industry participants, a third party electricity access code, and consumer protection measures.

Further implementation measures in each of these areas include the following:

- *An industry licensing regime.* The independent Economic Regulation Authority commenced on 1 January 2004. It is responsible for utilities regulation in Western Australia. The *Electricity Industry Act 2004* specifies procedures in relation to granting licences, including terms and conditions that the authority may impose, licence exemption conditions, and licence amendment, transfer, enforcement and cancellation procedures.

- *Third party access.* A new electricity access code that provides for third party access to electricity networks in Western Australia is being developed consistent with the principles in clause 6 of the CPA. The access code will be operational by the end of 2004.

- *A wholesale market.* The wholesale electricity market is scheduled to commence from July 2006. A Market Rules Development Group has been set up to help develop market rules for the wholesale market. The market rules were proclaimed on 30 September 2004. Transitional arrangements will be developed to assist independent power producers to compete until the market is fully implemented.

- *Top up and spill.* New electricity balancing and trading arrangements have been established as the first stage of progression to the new wholesale market. The arrangements allow independent generators to manage load balancing requirements and to trade on a limited basis.

- *Independent market operator.* The government is in the process of establishing an independent market operator — a new entity independent of Western Power. The independent market operator will operate the wholesale market by the end of 2004.

- *Consumer protection.* Consumer protection measures will include the implementation of a customer service code, standard supply contracts, consumer connection policies and an energy ombudsman scheme, and the imposition of retailer of last resort obligations on Western Power.

In addition, retail contestability thresholds for electricity are being progressively lowered. In July 2001 the threshold was lowered from an average load of at least 1 000 kilowatt (or 8 760 megawatt hours per annum) to an average load of 230 kilowatt (or 2 000 megawatt hours per year) at a single site. On 1 January 2003, contestability was extended to customers

using an average load of at least 34 kilowatt (or 300 megawatt hours per year). This represented an increase in the number of contestable customers from 450 to around 2 500, meaning contestability has been extended to approximately 50 per cent of Western Power's total sales.

The government initially had a target of introducing full retail contestability from 1 January 2005. In its 2004 NCP annual report, Western Australia has noted that the Electricity Reform Task Force has recommended a delay in the implementation of full retail contestability until such time as competition develops in the generation and wholesale markets. The task force proposed that the threshold for contestability be reduced to 5.7 kilowatt average load (50 megawatt hours per year) on 1 January 2005. The government has accepted this recommendation and will introduce the next tranche on 1 January 2005. The Council accepts that implementation of other key reforms (including the establishment of a generation wholesale market) should appropriately precede the introduction of further contestability.

Western Australia has made substantial progress in implementing electricity sector reform. However, it has failed to implement an essential aspect of the reform package recommended by the Electricity Reform Task Force and accepted by the government — namely, the structural separation of Western Power into generation, networks and retail entities in the south west interconnected system, and the establishment of a regional power entity for Western Power's north west interconnected system and non interconnected system. In its final report to government, the task force referred to the recommendations for Western Power's disaggregation and for the establishment of the wholesale market as '[t]he most significant recommendations of the Task Force'. It noted too that '[c]entral to the proposed structural change is the disaggregation of Western Power'.

The Electricity Corporation Bill 2003, required to implement the disaggregation of Western Power, was introduced into the Legislative Assembly in October 2003. The Bill progressed to a second reading in the Legislative Council before being withdrawn, with publicised opposition making it evident that the Bill would not pass a third reading.

The government has stated in its 2004 NCP annual report that it continues to be committed to the disaggregation of Western Power and intends to reintroduce the disagreggation legislation following the next election. The passage of the legislation and the implementation of the restructuring reforms would satisfy Western Australia's CPA clause 4 obligations. The Council will review the position in its 2005 NCP assessment.

The Council considers Western Australia's failure to implement the structural reforms recommended by the Electricity Reform Task Force and accepted by the Government to be a serious breach of its obligation under CPA clause 4. The Council is mindful, however, of the substantial progress made by Western Australia in implementing other key aspects of the reform program.

The Northern Territory

At the time of the 2003 NCP assessment, the Northern Territory had one outstanding legislation review matter relating to electricity — namely, section 19 of the *Power and Water Corporation Act 2002*.

The section provides the corporation with an exemption from the payment of local government rates. The Northern Territory advised for the 2003 assessment that the section had not yet been repealed because complexities regarding the local government funding arrangements were yet to be resolved. Until such time, the corporation will continue to pay local government rate equivalents through the Northern Territory's tax equivalent regime. It has done so since 1 July 2001, and the arrangements satisfy competitive neutrality requirements.

Table 6.2: Review and reform of electricity-related legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Electricity (Pacific Power) Act 1950*	Provides for the constitution of Pacific Power and to define its principal objectives, powers, authorities, duties and functions. Amends and repeals certain other Acts.	Not for review, as the Government has established new state-owned corporations from Pacific Power's generation and transmission businesses.	The Act was repealed by the Pacific Power (Dissolution) Act 2003, assented to on 30 June 2003.	Meets CPA obligations (June 2003)
	Electricity Safety Act 1945	Provides for the development of electricity supply; confers certain powers, authorities, duties and functions on the Energy Corporation of NSW; provides for the regulation of the sale and hiring of electrical apparatus and amends certain Acts.	Review completed in March 2002. The review recommended that: • the legislation be retained; • government intervention regarding consumer electrical articles and installations is warranted and should be retained; and • the provisions applying to the safety of second-hand consumer electrical articles be retained.	The Government approved the review's recommendations in May 2002. There are no NCP-related changes to the legislation.	Meets CPA obligations (June 2003)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Electricity Supply Act 1995*	Regulates the supply of electricity in the wholesale and retail markets; sets out the functions of persons engaged in the conveyance and supply of electricity The Act does not contain anti-competitive provisions.	Review will be undertaken after trends in the fully contestable retail market become clear.	Extensive amendments were made to the Act in late 2000 to facilitate the introduction of full retail contestability for all electricity customers in NSW from 1 January 2002.	Meets CPA obligations (June 2003)
	Electricity Transmission Authority Act 1994	Constitution of the New South Wales Electricity Transmission Authority		Act repealed.	Meets CPA obligations (June 2001)
	Energy Administration Act 1987 (Electricity-related provisions)	Constitution of the Energy Corporation of New South Wales	Review completed.	Licence and approval requirements repealed.	Meets CPA obligations (June 2001)
Victoria	*Electricity Industry Act 1993*	Implements electricity industry reform	Review completed.	Act replaced by the Electricity Industry Act 2000. The Electricity Industry (Residual Provisions) Act 1993 contains remaining provisions relevant for historical purposes.	Meets CPA obligations (June 2001)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Electricity Industry Act 2000*	Implements electricity industry reform	Assessed against NCP principles at introduction. Assessment found the Act's provisions to be consistent with NCP principles, that is they do not restrict competition, but rather underpin existing competition and facilitate its introduction for domestic and small business customers.		Meets CPA obligations (June 2001)
	Electric Light and Power Act 1958			Act repealed and replaced by the Electricity Safety Act 1998.	Meets CPA obligations (June 2001)
	Electricity Safety Act 1998	Safety standards for equipment, licensing of electrical workers	Assessed against NCP principles at introduction. Assessment found the restrictions justified in the public interest on public safety and consumer protection grounds. Act addresses consumers' inability to detect hazardous products and assess the competency of tradespeople.	Restrictive provisions retained.	Meets CPA obligations (June 2001)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Victoria (continued)	*Electricity Safety (Equipment) Regulations 1999*	Standard-setting and approval requirements for electrical equipment	Assessed against NCP principles at introduction. Assessment found the restrictions justified in the public interest on public safety and consumer protection grounds. Regulations address consumers' inability to detect hazardous products.	Restrictive provisions retained.	Meets CPA obligations (June 2001)
	Snowy Mountains Hydro-Electric Agreements Act 1958			Act repealed.	Meets CPA obligations (June 2001)
	State Electricity Commission Act 1958		Scoping study has shown that the Act does not restrict competition.		Meets CPA obligations (June 2001)

(continued)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Queensland	*Electricity Act 1994*	Conduct requirements, restrictions on trading activities, Ministerial pricing powers	Review of non-safety provisions completed in April 2002. Review made nine recommendations. Government accepted all recommendations with legislative amendments to be implemented in regard to six of the recommendations, departmental reviews for a further two and ongoing implementation of existing processes in regard to the remaining recommendation.	Legislative amendments to give effect to recommendations relating to non-safety provisions were assented to in May 2003 in the *Electricity and Other Legislation Amendment Act 2003*.	Meets CPA obligations (June 2003)

(continued)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Western Australia	*Electricity Act 1945 – Part 1 of 2*	Regulations concerning mandated supply, determination of interconnection prices, restrictions on the sale/hire of non-approved electrical appliances, uniform pricing	Initial review completed in 1998. The review recommendations have been superseded by wider reform of the electricity industry.	Repealed by the Electricity Legislation Amendment Act 2004.	Meets CPA obligations (October 2004)
	Electricity Corporation Act 1994	Exclusive retail franchise of Western Power, entry restrictions for generation, competitive neutrality restrictions	Initial review completed. Further review was conducted as part of wider electricity sector reform.	Some minor competitive neutrality advantages have been removed by the Statutes (Repeals and Minor Amendments) Act 1998. Generator entry restrictions removed by the establishment of the electricity market, licensing regime and access code under the Electricity Industry Act 2004 and Electricity Legislation Amendment Act 2004. Retail contestability to be gradually introduced.	Meets CPA obligations (October 2004)

(continued)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
South Australia	*Electricity Act 1996*	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms	No reform required	Meets CPA obligations (June 2003)
	Electricity Corporation Act 1994	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as Act facilitates establishment of state owned corporations in SA in conjunction with other national electricity market reforms.	No reform required	Meets CPA obligations (June 2003)
	National Electricity (South Australia) Act 1996	Restrictions on market entry and market conduct	Review completed in September 2000. No reforms recommended as sole object is to implement a national electricity market. Review process: consultation with other jurisdictions.	No reform required	Meets CPA obligations (June 2003)

(continued)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Tasmania	*Electricity Supply Industry Act 1995*	Conduct requirements, exclusive retail provisions, tariff-setting procedures	Review completed in late 2001.	Review recommendations were either enacted or are redundant following passage of legislation enabling Tasmania's entry into the NEM.	Meets CPA obligations (June 2003)
	Electricity Consumption Levy Act 1986			Act repealed.	Meets CPA obligations (June 2001)
	Hydro-Electric Commission Act 1944, *Hydro-Electric Commission (Doubts Removal) Act 1972* and *Hydro-Electric Commission (Doubts Removal) Act 1982*			Acts repealed and replaced by the Electricity Supply Industry Act 1995 and the Electricity Supply Industry Restructuring (Savings and Transitional Provisions) Act 1995.	Meets CPA obligations (June 2001)
ACT	*Utilities Act 2000*	Licensing requirements, restrictions on business conduct	The Act's introduction followed public consultation and review of both existing regulatory arrangements and principles for effective regulation.	Restrictive provisions retained. Other Acts amended or repealed include the *Electricity Supply Act 1997*, the *Electricity Act 1971*, the *Energy and Water Act 1988* and the *Essential Services (Continuity of Supply) Act 1992*.	Meets CPA obligations (June 2001)

(continued)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Northern Territory	*Electricity Act*		Act reviewed as part of a broad review of the Power and Water Authority, and under a departmental review.	Act repealed and replaced by the Electricity Reform Act, the Electricity Networks (Third Party Access) Act and the Utilities Commission Act.	Meets CPA obligations (June 2001)
Northern Territory (continued)	*Power and Water Authority Act*		Review completed.	Act was replaced by the Power and Water Corporations Act from 1 July 2002. All electricity-related amendments made except for the removal of GOC's local government rate exemption (s.19). There is no specific timetable for repeal of s.19. GOC to continue to pay local government rate equivalents through the Territory's Tax Equivalent Regime until complexities regarding the existing local government funding arrangements are resolved. GOC began paying local government rate equivalents on 1 July 2001.	Does not meet CPA obligations (June 2004)

7 Gas

National Competition Policy commitments

In the 1990s the Council of Australian Governments (CoAG) struck agreements aimed at creating a national gas market with more competitive supply arrangements. CoAG recognised that a well-developed and competitive gas industry was vital to Australia's economic and environmental future.

- The 1994 CoAG gas agreement set a timetable and framework to introduce free and fair trade in natural gas.
- The 1995 competition policy agreements, including the Competition Principles Agreement (CPA), linked reform of the natural gas industry to National Competition Policy (NCP) payments.
- The 1997 Natural Gas Pipelines Access Agreement set a framework for governments to enact uniform gas access legislation incorporating the National Third Party Access Code for Natural Gas Pipeline Systems (National Gas Code).

Table 7.1 summarises governments' NCP commitments in gas. The core commitments are (1) the removal of all legislative and regulatory barriers to free and fair trade in gas within and between jurisdictions, and (2) the provision of third party access to gas pipelines. Other commitments include:

- the adoption of uniform national pipeline construction standards
- the commercialisation of publicly owned gas utilities
- the removal of restrictions on the uses of natural gas (for example, for electricity generation)
- the limiting of gas franchise arrangements to those that are consistent with free and fair competition in gas markets and third party access.

Table 7.1: Summary of government commitments

Commitment	*Source of commitment*
Corporatisation, vertical separation of transmission and distribution activities, and structural reform of government-owned gas utilities	1994 gas agreement and the CPA
Ringfencing of privately owned transmission and distribution activities	1994 gas agreement
Implementation of Australian Standard (AS) 2885 to achieve uniform pipeline construction standards	1994 gas agreement
Gas access regime	
Enactment of regime	1997 gas agreement, clause 5
Nonamendment of regime without agreement of all Ministers	1997 gas agreement, clause 6
Amendment of conflicting legislation and no introduction of new conflicting legislation (except regulation of retail gas prices)	1997 gas agreement, clause 7
Certification	1997 gas agreement, clause 10.1
Continued effectiveness of regime after certification	1997 gas agreement, clause 10.2
Transitional provisions and derogations that do not go beyond annex H and annex I	1997 gas agreement, clause 12
Licensing principles	1997 gas agreement, annex E
Franchising principles	1997 gas agreement, annex F
Legislation review	
Upstream issues, particularly petroleum (submerged lands) Acts and petroleum Acts	CPA
Industry standards, trade measurement Acts and national measurement Acts	CPA
Consumer protection	CPA
Safety	CPA
Other legislative restrictions (for example, shareholding restrictions, licensing Regulations, agreement Acts)	CPA

Progress in meeting commitments

The CoAG reforms for free and fair trade in gas are nearing completion. The Council has previously concluded that two areas of reform were complete: (1) the structural reform of gas utilities and (2) adherence to the CoAG franchising and licensing principles.

All states and territories have implemented the National Gas Code.[1] In most states and territories, all gas customers (including households) can enter a contract with a supplier of choice.[2] Governments have also removed most remaining legislative and regulatory barriers to trade, removed most exclusive franchise arrangements and reformed the monopoly utilities that once dominated the gas industry. The NCP assessments facilitate independent monitoring of gas reform implementation and, in the National Competition Council's view, have provided strong incentives for jurisdictions to complete the CoAG reforms.

The Parer Review found that reform has promoted the gas industry's development. In particular, the review considered that the removal of restrictions on interstate trade in gas, the provision of access to pipelines and the removal of exclusive franchises have encouraged exploration for, and the development of new gas reserves and the construction of new pipelines (CoAG Energy Market Review 2002).

While governments have substantially completed their implementation of the CoAG gas reforms, the 2003 NCP assessment identified areas in which work remained. In the following sections, the Council considers governments' progress in these areas.

National Gas Access Regime

Enactment and certification

The 1997 gas agreement requires governments to enact legislation to introduce a regime for third party access to the services of natural gas pipelines. The regime comprises a uniform Gas Pipelines Access Law (GPAL) and the National Gas Code. Governments are required to seek certification of their gas access regimes as being effective regimes under part IIIA of the *Trade Practices Act 1974* (TPA).

The Council previously assessed that all governments except Tasmania had met their obligations to enact the National Gas Access Regime and seek certification. While Governments are not required to obtain certification to

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1 Some jurisdictions implemented derogations (variations) from the code. In most cases, the Australian Government and all state and territory governments approved these derogations.

2 In Queensland, only customers using more than 100 terajoules of gas per year can choose their gas supplier. In other states and territories, all gas customers can now do so.

meet their obligations, all other than Queensland have done so.[3] Table 7.2 summarises progress in the enactment and certification of state and territory gas access regimes.

Table 7.2: Enactment and certification of access regimes

Jurisdiction	*Legislation enacted*	*Certified effective*
New South Wales	Yes	Certified effective March 2001 for 15 years
Victoria	Yes	Certified effective March 2001 for 15 years
Queensland	Yes	Recommendation of the Council is with the Australian Government Minister. The recommendation is that the regime does not meet the requirements for effectiveness under part IIIA of the TPA.
Western Australia	Yes	Certified effective May 2000 for 15 years
South Australia	Yes	Certified effective December 1998 for 15 years
Tasmania	Yes	Application made to Council in October 2004
ACT	Yes	Certified effective September 2000 for 15 years
Northern Territory	Yes	Certified effective October 2001 for 15 years

Tasmanian gas access regime

In the 2003 NCP assessment, the Council identified Tasmania's obligation to apply for certification of its gas access regime as an outstanding issue. Under the 1997 gas agreement, Tasmania's obligations to enact the National Gas Access Regime and have its regime certified were delayed until the state's first natural gas pipeline was approved, or until a competitive tendering process for a pipeline commenced. In 1997 Tasmania selected Duke Energy International to develop a natural gas supply to Tasmania. Duke constructed a transmission pipeline from Victoria to Tasmania, with lateral pipelines to the south and north west of the state. The first deliveries of gas were made in September 2002.

In 2001 Tasmania commenced a tender process to award a five-year exclusive franchise for the distribution and retail of natural gas. The tender process, which followed National Gas Code procedures, was terminated in 2002 when it became clear that all bids relied on significant financial support and risk-taking by the state. Following discussions with participants in the tender process, Tasmania signed agreements with Powerco Limited in 2003 to develop the state's distribution network. Work commenced in October 2003, with stage one of the network scheduled for completion by February 2005.

[3] The Council reviewed Queensland's access regime and recommended in 2002 that it did not meet the requirements for effectiveness. An absence of certification does not limit the operability of a state access regime. However, the services covered by an ineffective regime are open to a declaration application under part IIIA of the TPA.

Tasmania implemented the National Gas Code through the *Gas Pipelines Access (Tasmania) Act 2000*, which it passed in November 2002. It also enacted the *Gas Pipelines Act 2000* to regulate licensing provisions and gas safety matters, and the *Gas Act 2000* to regulate the distribution and retailing of natural gas. The state originally planned to seek certification of its access regime in 2002. The application was delayed by amendments to the legislative and regulatory framework following the termination of the 2001 tender process and by the need for consistency with the development agreement with Powerco. Tasmania applied for certification of its access regime in October 2004.

Exclusive franchise arrangements

Tasmania's agreement with Powerco to develop a distribution network includes the award of an exclusive distribution franchise. The arrangement applies to 23 major industrial and commercial customers identified in the first stage of the distribution rollout. Tasmania does not envisage using exclusive franchises for later stages of the rollout, including the rollout to small commercial and residential customers.

Tasmania advised that its exclusive franchise arrangements depart from the 1997 gas agreement, notably in relation to the selection process for the franchise distributor (which was less public than the code requires), bypass arrangements (which are not permitted for the 23 nominated customers), and the duration of the franchise (which is two years longer than the agreement permits). Tasmania considers that these departures were necessary for the development of gas distribution infrastructure in the state, noting that the code-compliant tender process in 2002 could not deliver a viable outcome. Tasmania considers that the response from the market was that network construction required a guaranteed customer base for a specified period.

The arrangements derogate from clause 3(d) of annexe E of the 1997 gas agreement because they alter the scope and length of Tasmanian franchise arrangement for gas distribution and as such, require the approval of all jurisdictions. Tasmania received this approval in June 2003. While agreeing to the derogation, the Australian Government expressed concerns that Tasmania had entered binding arrangements that depart from the code before consulting with other jurisdictions. It also urged Tasmania to monitor Powerco's market behaviour in case of possible abuse.

In gaining the agreement of all governments, Tasmania has addressed NCP assessment issues that are raised by the exclusive franchise arrangements.

Full retail contestability

The 1997 gas agreement requires the introduction of full retail contestability for all gas consumers. This entails the right to enter a gas supply contract with a supplier of choice. Full retail contestability promotes competition

between gas retailers and gas producers, thus encouraging better service quality, more efficient energy industries (through opportunities for economies of scale) and lower prices for customers.

The introduction of full retail contestability is important to fully realise the benefits of reform in the gas sector. To do this effectively, governments must remove legal barriers to competition and implement business rules that cover:

- processes for measuring gas use (through metering, profiling or other processes)
- protocols for transferring customers from one supplier to another
- consumer protection
- safety and gas specification requirements to enable interconnection to take place.

The legal removal of most barriers to competition occurred with the enactment of the GPAL, including the National Gas Code. The business rules must make it practical for customers to select from among suppliers, thus encouraging suppliers to compete to secure customers. Similar processes have promoted competition in industries such as telecommunications.

The 1997 gas agreement nominated 1 September 2001 as the latest date for governments to introduce full retail contestability.[4] Governments experienced significant difficulties with achieving this timeframe, and some announced deferrals of up to 18 months for smaller customers. The difficulties related to:

- the introduction of information technology systems to handle customer billing and transfer
- a need for the industry to develop market rules to allow for the orderly management of customer transfers between retailers
- the choice and costs of a method of metering (that is, how to cost-effectively measure the gas use by small customers).

For the 2003 NCP assessment, the Council considered that New South Wales, Victoria, the ACT and the Northern Territory had met their NCP obligations by removing legal and other barriers to full retail contestability. Western Australian and South Australian gas consumers became legally contestable from July 2002 and July 2001 respectively, but technical barriers remained in place. Other jurisdictions were yet to implement full retail contestability. Table 7.3 outlines progress in this area.

[4] Except for Western Australia, where the date was 1 July 2002.

Table 7.3: Contestability timetables for the National Gas Access Regime (TJ = terajoule)

Date	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*ACT*	*Northern Territory*	*Tasmania*
1 July 1999					>10 TJ per year			
1 September 1999		Customers using >100 TJ per year						
1 October 1999	Customers using >1 TJ per year					Customers using >1 TJ per year	No phase-in arrangements	
1 January 2000				Customers using >100 TJ per year				
1 July 2000	All customers				Industrial and commercial customers using <10 TJ per year			
1 September 2000		Customers using >10 TJ per year						
1 July 2001			Customers using >100 TJ per year		All customers[d]			
1 September 2001		Customers using 5 – 10 TJ per year						
1 January 2002				Customers using >1 TJ per year		All customers[e]		
1 July 2002				All customers[c]				
1 October 2002		All customers[a]						
2002 –			No scheduled date for customers using < 100 TJ[b]					Expected in 2005[f]

[a] Modified from previous timetable of all customers by 1 September 2001. [b] Modified from previous timetables of 1 September 2001 and 1 January 2003. [c] Practical implementation occurred in May 2004. [d] Practical implementation occurred in July 2004. [e] Modified from previous timetable of all customers by 1 July 2000. [f] From commencement of gas flows through distribution network.

Queensland

For the 2003 NCP assessment, Queensland reported its intention not to extend retail contestability in gas, subject to a public consultation process. The proposal related to all parties using less than 100 terajoules of gas per year. Queensland intended to seek the agreement of other jurisdictions if it made a final decision not to proceed with the reform. In support of its proposal, Queensland provided the Council with a cost-benefit assessment by consultants McLennan Magasanik Associates Pty Ltd (MMA 2003a), which analysed the effects of extending contestability to customers using less than 1 terajoule of gas per year over a 20-year period.

For the 2004 NCP assessment, Queensland reported that public consultation on the MMA study had raised no material issues, and reiterated its decision not to extend retail contestability. It advised its intention to review its position in 2007. Queensland's decision means that consumers of less than 100 terajoules of gas per year are unable to choose their supplier. The affected parties include around 650 industrial and commercial businesses and 150 000 residential customers, comprising about 10 per cent of the Queensland gas market (by volume).

The 1997 gas agreement requires that governments introduce full retail contestability in gas no later than 1 September 2001 unless all jurisdictions approve an extension. When Queensland sought this approval in October 2003, all state and territory governments agreed, although Western Australia queried the treatment of customers using 1–100 terajoules of gas per year. The Australian Government did not endorse the proposal. It considered that Queensland's deferral of reform may have adverse implications for the development of a national energy market.

Queensland advised the Council in September 2004 that the MMA report it provided in 2003 was part of a wider study. The published report only analysed the effects of extending contestability to customers using less than 1 terajoule of gas per year. Queensland advised that MMA also prepared a companion cost-benefit report on the effects of extending contestability to customers using 1–10 terajoules per year (identified as tranche 3) and 10–100 terajoules per year (tranche 2) (MMA 2003b). Queensland did not release the companion report for consultation. It provided the report to the Council on a confidential basis.

The two cost-benefit reports, in combination, consider the effects of implementing retail contestability for all customers. The identified costs and benefits include:

- transaction costs to establish and operate metering, profiling, customer transfer systems and regulatory structures to support contestability
- incremental marketing costs associated with competition

- wholesale gas savings
- economies of scale and scope flowing from competitive markets.

The reports recognise but do not quantify the benefits of new products and improved customer service likely to flow from greater competition. Similarly, while the reports acknowledge the flow-on benefits of lower gas prices into other product prices, this benefit is excluded from the quantitative analysis. The report claims that these types of benefits are difficult to quantify (MMA 2003a). A summary of the findings appears at table 7.4.

Table 7.4: Extension of Queensland gas retail contestability: net benefits

	Tranche 2	*Tranche 3*	*Tranche 4*	
	Commercial and industrial	*Small commercial and industrial*	*Residential*	***All customers***
Gas use category (Tj per year)	10-100	1-10	0-1	**0-100**
Customers (no.)	150	500	150 000	**150 650**
Gas sold (Tj per year)	3 750	1 400	3 000	**8 150**
Gas use per customer (Gj per year)	25 000	2 800	20	
Net benefit from contestability ($'000)	$14 900	$2 600	–$42 600	**–$25 100**

[a] Measured over a period of 20 years.

Source: MMA 2003a

The reports predicted that over a 20 year period, extending contestability would result in:

- positive net benefits from extending contestability to tranches 2 and 3 (customers using between 1–100 terajoules per year)
- negative net benefits from extending contestability to tranche 4 in isolation (customers using between 0–1 terajoules per year).

For tranche 4, the study found that the transaction costs to establish and operate metering, profiling, customer transfer systems and regulatory structures to support contestability, plus incremental marketing costs associated with competition, would outweigh the benefits of wholesale gas savings and economies of scale and scope flowing from competitive markets.

The study recommended an extension of contestability to tranches 2 and 3. Queensland informed the Council in September 2004 that it had not implemented these recommendations because it had not identified an equitable method of unwinding historical cross subsidies in the market.

Assessment

Queensland has made no progress towards extending contestability to commercial and industrial customers using 1–100 terajoules of gas per year, despite an independent study (commissioned by Queensland) finding that the benefits of extending contestability would outweigh the costs.

The 1997 gas agreement recognised that the introduction of retail contestability would pose transitional issues (including cross-subsidy issues) for all jurisdictions, and allowed for a phased implementation. Governments agreed to remove transitional barriers to competition by September 2001. Queensland did not meet this time frame, and failed to gain the approval of all governments for an indefinite deferral of retail contestability as required by the gas reform agreements.

Queensland argues that their failure to introduce full contestability is a result of their inability to address historical cross subsidies. They have not provided evidence as to why these issues have been incapable of resolution. Such cross subsidies have been addressed in all other states and territories, which have moved to implement cost reflective pricing. The Council notes that an extension of contestability would not preclude Queensland from subsidising retail prices for particular customer classes. The competition policy agreements do not object to subsidies or community service obligations that are competitively neutral, transparent, appropriately costed and directly funded by governments.

The Council concludes that Queensland has not complied with its obligations under the 1997 gas agreement and has failed to implement the recommendations of its own cost-benefit assessment to extend retail contestability to tranches 2 and 3. Queensland is more than two years behind the CoAG milestone for implementation, and has provided no evidence of progress towards addressing cross-subsidy issues.

The Council considers that Queensland's failure to extend contestability to tranches 2 and 3 is a serious breach of its NCP gas reform commitments. In particular, the MMA study identified significant benefits in extending contestability, both for medium to large gas users and for the Queensland community. In the 2005 NCP assessment the Council will look for Queensland to have implemented the study's recommendations.

Western Australia

Western Australia introduced retail contestability in 2000 with the removal of legal impediments for major users. Customers using 1–100 terajoules of gas per year — such as hospitals, hotels, restaurants, laundries and bakeries — became contestable in January 2002. Legal impediments for small business and household customers using less than 1 terajoule of gas per year were removed in July 2002. In practice, however, contestability for the 440 000 small business and household customers in this group was delayed because

the necessary rules, systems and regulatory framework were not yet in place. To progress these issues, the government established a Gas Retail Deregulation Project Steering Group. It reported in 2004 that the steering group has determined a market operator, developed arrangements for customer transfers, considered consumer protection and education issues, addressed emergency gas supply management and procedures, and developed 'retailer of last resort' arrangements.

At the time of the 2003 NCP assessment, Western Australia and South Australia had jointly established a Retail Energy Market Company (REMCo) to establish and administer retail market administration systems across the two states, and developed retail market rules. Western Australia had also finalised a consultant's report on gas metering issues.

The *Energy Legislation Amendment Act 2003* provides the legislative underpinning for effective contestability arrangements. It establishes a legal framework for REMCo and the retail market rules, and enables the approval of retail marketing schemes and the introduction of customer protection measures (such as a gas marketing code of conduct, a gas industry ombudsman scheme and 'retailer of last resort' arrangements). It also allows the granting, after a competitive tender, of exclusive gas distribution and trading licences to reticulate gas to regional communities. The Act received royal assent on 8 October 2003, and all parts required for the commencement of full retail contestability have been enacted. Western Australia intends to enact provisions for a 'retailer of last resort' before new entrants enter the market. Regulations are currently being drafted to allow for the Economic Regulation Authority to approve future ombudsman schemes (the Minister approved the current scheme).

REMCo submitted the retail market rules to the Office of Energy in March 2004. Following government approval of the rules, full retail contestability commenced on 31 May 2004. REMCo used an interim process to operate the gas market until the activation of its information technology systems in July 2004. New entrants can now sell gas to residential and small business customers. The government considers that new entry, and the potential for new entry, will encourage improvements in service and product offerings to customers.

With the removal of technical and administrative barriers to contestability in 2004, the Council is satisfied that Western Australia has satisfied its NCP obligations by removing legal and other barriers to full retail contestability. It notes that any exclusive licence and franchise arrangements that Western Australia grants under the Energy Legislation Amendment Act should observe the 1997 gas agreement, including the licensing and franchising principles set out in annexes E and F.

South Australia

There have been no regulatory barriers to contestability in South Australia since July 2001. In practice, however, contestability for over 340 000 domestic households and small businesses was delayed by a lack of access to infrastructure, limited gas supply and a lack of information systems to allow for the orderly management of customer transfer between retailers.

Access issues were largely addressed by the South Australian Independent Pricing and Access Regulator's final approval of an access arrangement for gas distribution networks in April 2003. The construction of the SEA Gas Pipeline from Victoria to Adelaide, which was completed in 2004, addressed gas supply constraints. South Australia also undertook measures to address the remaining technical and administrative barriers to customer transfer.

In 2003, the government amended the *Gas Act 1997* to establish a retail market administrator, facilitate full retail contestability systems and establish consumer protection arrangements suitable for a multiple retailer environment. South Australia and Western Australia jointly established REMCo to establish and administer retail market administration systems across the two states. The Essential Services Commission of South Australia[5] has given REMCo a licence to operate as a gas retail market administrator in South Australia. In 2003-04 REMCo developed the required information technology systems and retail market rules to underpin full retail contestability. The government approved the initial rules, but the Essential Services Commission must approve subsequent modifications. Effective gas retail competition for all customers commenced on 28 July 2004. The Council notes that the removal of technical and administrative barriers to contestability completes South Australia's NCP gas reform obligations in this area.

Tasmania

The *Gas Infrastructure (Miscellaneous Amendments) Act 2003,* passed by the Tasmanian Parliament in July 2003, provides for a fully contestable gas retail market. Tasmania reported that it will introduce full retail contestability from the commencement of gas flows through the distribution network, which it expects in 2005. Two retailers, Powerco and Aurora Pty Ltd, have already been licensed to retail gas.

All customers, including those covered by exclusive distribution franchise arrangements, will be contestable. Tasmania considers that the exclusive franchises, which are limited to 23 major customers, are consistent with the

[5] The regulatory functions of the South Australian Independent Pricing and Access Regulator were transferred to the Essential Services Commission of South Australia in July 2003.

introduction of full retail contestability. It reported that the franchise arrangements relate only to the distribution of gas, and not to gas retailing: all customers will be free to negotiate with a retailer of choice to supply gas. Under the Tasmanian gas access regime, retailers will then be able to negotiate access to the distribution network to ship gas to customers. The Council considers that Tasmania's contestability arrangements will satisfy its commitments in this area.

Legislative restrictions on competition

Governments agreed to review and, where appropriate, reform by 30 June 2002 all existing legislation that restricts competition. Reform is appropriate where restrictions do not provide a net benefit to the whole community and are not necessary to achieve the objective of the legislation. Any new legislation that restricts competition must also meet this test.

Legislation relating to natural gas generally falls into one or more of the following categories: petroleum (onshore and submerged lands) legislation; pipelines legislation; restrictions on shareholding in gas sector companies; standards and licensing legislation; and state and territory agreement Acts. Other areas might include mining legislation (particularly dealing with coal and oil shale, which can produce coal methane gas) and environmental planning legislation.

Governments' progress in reviewing and reforming relevant legislation is reported in table 7.7. The review and reform of natural gas legislation have been completed in most areas, although some reviews have not been finalised and some necessary reform is yet to be implemented.

Upstream issues

An efficient gas production sector ensures gas sales markets are able to develop and grow. In 1998 the Upstream Issues Working Group reported to CoAG on matters affecting the development of a more competitive gas production (upstream) sector. It identified the key issues as being the marketing arrangements used by gas producers, third party access to upstream processing facilities, and acreage management legislation.

All jurisdictions have been engaged in the review and reform of their acreage management legislation, both offshore and onshore. The offshore legislation — the petroleum (submerged lands) Acts — was reviewed through a national process. Each state and territory with onshore acreage management legislation is reviewing that legislation individually.

Submerged lands legislation

All states and the Northern Territory have petroleum (submerged lands) legislation that forms part of a national scheme to regulate exploration for, and the development of, undersea petroleum resources. The Acts were reviewed in 1999-2000. The Australian and New Zealand Minerals and Energy Council Ministers endorsed the national review report, which was made public in March 2001.

The review concluded that the legislation is essentially pro-competitive and that any restrictions on competition (in relation to safety, the environment and resource management, for example) are appropriate given the net benefits to the community. The review recommended two specific legislative amendments, focusing on administrative streamlining and measures to enhance the certainty and transparency of decision making. One amendment sought to address potential compliance costs associated with retention leases and the other sought to expedite the rate at which exploration acreage can be made available to explorers. A third recommendation was to rewrite the legislation.

The two specific legislative amendments were incorporated into the Australian Government's *Petroleum (Submerged Lands) Amendment Act 2002,* which was enacted in October 2002. The government expects to introduce the new Act (the Offshore Petroleum Act) in early 2005. All relevant jurisdictions indicated that they will amend their legislation to reflect the 2002 amendments, but most have not yet done so. Table 7.5 provides a summary of progress in this area. The Council understands that some jurisdictions are awaiting the passage of the Offshore Petroleum Act before completing changes to their own legislation. A number of jurisdictions also reported the need for additional amendments during 2004 to confer powers on the National Offshore Petroleum Safety Authority.

The Council considers that while reform in this area remains incomplete, all states and territories have committed to implement the necessary amendments to establish a nationally consistent regime.

Table 7.5: Amendments to petroleum (submerged lands) legislation

Jurisdiction	*Action*
New South Wales	Awaiting completion of Australian Government amendments before amending own legislation
Victoria	The amendment Bill was passed in the autumn 2004 Parliamentary sitting and was given royal assent in May 2004. Victoria will rewrite the Act in 2005 following the rewrite of the Australian Government Act
Queensland	The amendment Bill was introduced into Parliament in August 2004 and is expected to be passed by the end of 2004. Queensland will rewrite to Act in 2005 following the rewrite of the Australian Government Act
Western Australia	Awaiting completion of Australian Government amendments before amending own legislation

South Australia	Awaiting completion of Australian Government amendments before amending own legislation
Tasmania	The amendment Bill was introduced to Parliament in April 2004 and is expected to be passed by the end of 2004. The Bill includes amendments in anticipation of the proposed new Australian Government Act
Northern Territory	Likely to await completion of Australian Government Act before amending own legislation

Onshore acreage management legislation

The Council previously assessed that New South Wales, Victoria and South Australia had met their NCP obligations to review and reform their onshore acreage management legislation. The Australian Government, the ACT and Tasmania do not have this type of legislation.

Queensland's review of the *Petroleum Act 1923* and the *Gas Act 1965* led to the introduction of the *Petroleum and Gas (Production and Safety) Bill* into Parliament in May 2004. The legislation provides for a new policy regime to apply to the petroleum and pipeline industries in the State and to regulate safety and technical issues in relation to the production, transportation and use of petroleum and fuel gas.

The resulting Act is consistent with the intent of the Upstream Industry Working Group's reforms in acreage management in that it adopts:

- a competitive tender process for the grant of onshore exploration acreage. Authorities to prospect will have a maximum term of 12 years, with progressive relinquishment over that period

- a requirement for strict compliance with work programs submitted through a tender process

- an increase in the size of production tenures, but a change in the criteria for their grant to ensure only areas of identified reserves are included. Acreage with the potential for further discoveries is excluded.

The *Petroleum Act 1923* is to continue so as to preserve existing rights for approximately 25 per cent of the current 'authorities to prospect' and almost all petroleum leases. The continuation of these tenures will ensure that existing rights will be preserved and there will be no disruption to petroleum production owing to the need to address native title issues.

The *Petroleum and other Legislation Amendment Bill 2004*, which amends the *Petroleum Act 1923* and contains transitional provisions for existing 'authorities to prospect', petroleum leases and pipeline licences, was introduced into Parliament in September 2004.

Both the *Petroleum and Gas (Production and Safety) Bill 2004* and *Petroleum and other Legislation Amendment Bill 2004* were passed by Parliament on 29 September 2004, received assent on 12 October 2004, and will be fully operational by the end of 2004.

Western Australia reviewed its *Petroleum Act 1967* and Petroleum Regulations 1987. The review, which the government endorsed in February 2003, recommended that the state implement the findings of the national review of the submerged lands legislation. It also recommended that potentially restrictive provisions in the Act and Regulations — covering drilling reservations, exploration permit splitting and special prospective authorities with an acreage option — be retained on the grounds that they do not restrict competition and that they provide a net public benefit. Western Australia proposes to further review the Act for consistency with its submerged lands legislation once the amendments to that legislation are completed (see the assessment of submerged lands legislation). The Council notes that Western Australia has committed to completing this area of reform.

The Northern Territory reviewed its *Petroleum Act* and approved the implementation of the review recommendations. It implemented some recommendations via the *Petroleum Amendment Act 2003* and drafted another Bill to implement the remaining recommendations. The government delayed the Bill's introduction to Parliament from September 2003 to May 2004. The Council notes that the Northern Territory's implementation of reforms in this area is near completion.

Victoria's significant producer legislation

The significant producer provisions in the *Gas Industry Act 2001* allow the Essential Services Commission to regulate anticompetitive conduct by significant producers. Victoria introduced the provisions in 1998 when the state's gas production was dominated by the Bass Strait joint venture between Esso Australia and BHP Billiton. The Council raised concerns in the 1999 NCP assessment that the provisions may be anticompetitive. The Parer Review also considered that they may weaken intra-basin competition (CoAG Energy Market Review 2002).

The Essential Services Commission completed a review of the provisions in June 2003. Its report concluded that the underlying objective of the provisions had been substantially achieved, given the extent to which gas market competition has developed since 1998. The commission recommended the repeal of the provisions as being appropriate to satisfy the future needs of a competitive gas market. Victoria repealed the significant producer provisions through the *Energy Legislation (Regulatory Reform) Act 2004,* which was given royal assent on 25 May 2004.

Outstanding legislation review and reform matters

In addition to the natural gas legislation noted above, the review and/or reform of three additional instruments was incomplete at the time of the 2003 NCP assessment: Victoria's *Pipelines Act 1967*, Queensland's *Gas Act 1965* and Tasmania's *Launceston Gas Company Act 1982*.

Victoria's Pipelines Act regulates the construction and operation of gas pipelines in the state. An NCP review of the Act was completed in February 1997. Victoria reported that the review did not identify any major restrictions on competition. It is undertaking a second review of the Act to develop a regulatory framework that is consistent with other forms of infrastructure. It proposes to take account of the recommendations of both reviews in developing draft legislation. Victoria expects to complete the review in 2004 and to implement changes by 2005. The Council accepts that this timeframe is not unreasonable for updating regulation in this area.

Queensland reviewed its Gas Act in conjunction with the Petroleum Act, and drafted the Petroleum and Gas (Production and Safety) Bill and the Gas Supply Bill to replace those Acts. The *Gas Supply Act 2003* became operational on 1 July 2003. The Act regulates distribution pipeline licensing, the retailing of fuel gas, and insufficiency of supply. It replaces the monopoly gas franchises under the former legislation with a new licensing regime. Because Queensland has not implemented full retail contestability, the Act provides for the government to retain the right to control the price of gas supply. It requires the Minister to consider the interests of industry and consumers when setting prices.

Tasmania's Launceston Gas Company Act gives that company powers that are not available to potential competitors in the gas supply market. Tasmania substantially amended the Act via new legislation and intends to repeal the remaining sections once an accurate map of the pipeline network has been completed. The Council notes that reform of the Act has not been completed but that Tasmania has demonstrated a firm commitment to the reform.

Tasmania has introduced a substantial body of gas industry legislation since 2000 to coincide with the development of its gas industry. The state's gatekeeping arrangements apply to all proposed legislation to assess consistency with clause 5 of the CPA. The initial assessments are conducted by Treasury's Regulation Review Unit. Where the unit identifies a major restriction on competition, the administering agency must prepare a regulatory impact statement and conduct a public consultation process. The Council is satisfied that the arrangements provide a robust process for assessing compliance with CPA clause 5.

Industry standards

The Australian gas industry has been developing a national gas quality standard so processed gas can move through all interlinked pipeline networks without adversely affecting pipelines or gas appliances. The Council considers that such a standard is important to achieving a national gas market by removing a potential barrier to interstate gas trade.

Following a gas quality appliance testing program, undertaken by the Australian Gas Association and funded by governments and industry, the Natural Gas Quality Specification Committee was formed to write a new gas quality standard specification for general purpose natural gas. The standard, known as AS 4564/AG 864, defines the requirements for providing natural gas suitable for transportation in transmission and distribution systems within or across state borders, and provides the range of gas properties consistent with the safe operation of natural gas appliances supplied to the Australian market. Relevant gas sales contracts, legislation and/or government guidelines provide temporary departures from the standard.

AS 4564/AG 864 was endorsed in January 2003. All governments other than Western Australia and the Northern Territory have stated their intention to implement the standard (table 7.6). While only Queensland has completed this reform, the Council considers that New South Wales, Victoria, South Australia, Tasmania and the ACT have demonstrated a commitment to doing so.

Western Australia's Gas Standards (Gas Supply and System Safety) Regulations 2000 include a gas quality specification that applies to all gas entering a gas distribution system. The specification has a number of similarities to the national standard but unlike the national standard specifies a higher heating value range and a different hydrocarbon dewpoint. The higher heating value range is considered important in Western Australia as it forms the basis for billing customers on an energy basis (gigajoules/ m^3) and a number of contracts reflect higher heating value. No specification is called up in legislation to cover gas quality in transmission pipelines. However, pipelines covered by an Access Arrangement include a gas quality specification in the Access Arrangement. Western Australia reported in 2004 that it was reluctant to amend its local standards unless the national standard took account of these differences. Nevertheless, it was holding discussions with industry on the appropriateness of adopting the national standard. The government also recognised that if Western Australian pipelines interconnect in the future with interstate pipelines, it would need to review and, where appropriate, amend the local standard to reflect the national standard. Western Australia reported that it is not expected that the adoption of the national standard would have a material effect on the performance of gas appliances operating in Western Australia but could in the longer term restrict some producers from being able to ship their gas.

The Northern Territory reported in 2004 that it has no plans to introduce the national standard in the near future. As for Western Australia, it is not linked to the interconnected gas networks of south and east Australia, and has few consumers of natural gas. At present, its specifications for natural gas are set out in the provisions of contracts with the Power and Water Corporation, which consumes most of the natural gas sold in the Territory. The Northern Territory will review its position on the national standard if there are active plans to interconnect local pipelines with another jurisdiction (for example, to transport Timor Sea gas).

Adoption of the national standard is an important element in building a national gas market, and its implementation needs to be effective. The Council accepts that a decision not to implement the national standard will not create a barrier to interstate trade in natural gas at this stage for those jurisdictions that do not have interstate pipelines. Nevertheless, the inconsistent application of the standard across jurisdictions may have adverse impacts in other areas — for instance the production, sale or use of gas appliances. The Council will continue to monitor how jurisdictions are implementing the national standard, and any issues that may arise as a result of the standard's part application.

The ACT indicated that it intends gas industry participants to adopt the national standard. The Council considers that the national standard, to be effective in reducing barriers to interstate trade in gas, needs to be clearly implemented. Adopting the national standard legislatively would be a suitable means of implementation.

Table 7.6: Implementation of AS 4564/AG 864

Jurisdiction	*Action*
New South Wales	The government has adopted gas specifications that are identical to the national standard. The state Regulations will be amended to reference the national standard in 2004.
Victoria	Current regulations are substantially consistent with the national standard. Victoria is updating its Regulations in consultation with industry and will amend them to ensure they are fully consistent with and reference the national standards. Victoria expects to complete its reform activity by the end of 2004.
Queensland	The government implemented the national standard by Regulation in October 2003. The Regulation includes exemptions allowed under s.1.1.2 of the national standard, which will cease when Queensland natural gas is supplied to interstate markets.
Western Australia	The state's gas quality standards differ from the national standard in some areas. The government is discussing the need for consistency with industry and recognises the need for alignment with the national standard should interconnectivity occur in the future.
South Australia	The South Australian Regulations set the same natural gas quality specifications as those in the national standard. The government proposes to amend the Regulations to call up the standard.
Tasmania	The government proposes to formally adopt the national standard through Regulation in 2004. The state's only gas distributor already complies with the standard under system specifications developed under the Gas Act.

ACT	The government expects ActewAGL to adopt the national standard in the access arrangement for its gas distribution network, which will apply from 2005. The Independent Competition and Regulatory Commission released a draft decision on the arrangement in July 2004.
Northern Territory	The government does not intend to adopt the national standard until there are active plans to interconnect Northern Territory pipelines with another gas market (for example, to transport Timor Sea gas).

Table 7.7: Review and reform of legislation relevant to natural gas

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Petroleum (Submerged Lands) Act 1967*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by the Australian and New Zealand Minerals and Energy Council (ANZMEC) Ministers.	Two specific legislative amendments flowed from the review. One addresses potential compliance costs associated with retention leases and the other expedites the rate at which exploration acreage can be made available to explorers. These amendments were incorporated into the *Petroleum (Submerged Lands) Amendment Act 2002,* which was enacted in October 2002. A third recommendation was for the Act to be rewritten. The rewriting of the Act (as the Offshore Petroleum Act) is under way. The Australian Government expects to introduce it in late 2004. All relevant amendments are to be reflected in mirror state and territory legislation.	Review and reform incomplete. The Council assesses below the states' and territories' progress in amending their petroleum (submerged lands) Acts and rewriting counterpart legislation.
New South Wales	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	New South Wales is awaiting the passage of new legislation by the Australian Government (expected in late 2004) before amending its own legislation.	Review and reform incomplete

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Energy Administration Act 1987*	Establishes the Ministry of Energy and the Energy Corporation of New South Wales, and defines their functions.	Review was completed.	Licence and approval requirements were repealed by the *Electricity Supply Act 1995*. Sections 35A and 35B were dealt with as part of structural reform of the gas industry.	Meets CPA obligations (June 1999)
	Gas Industry Restructuring Act 1986	Makes provisions regarding the structure of AGL.	Review was unnecessary due to repeal of Act.	Act was repealed by the *Gas Supply Act 1996*, which corporatised AGL.	Meets CPA obligations (June 1997)
	Liquefied Petroleum Gas Act 1961 and *Liquefied Petroleum Gas (Grants) Act 1980*		Review was completed.	Act was repealed by the Gas Supply Act, among others.	Meets CPA obligations (June 1997)
	Petroleum (Onshore) Act 1991	Regulates the search for, and mining of, petroleum.	Review was completed.	Review recommendations were dealt with under the licence reduction program. Authority for exploration is retained. Business compliance costs are minimised.	Meets CPA obligations (June 1999)
	Pipelines Act 1967	Regulates the construction and operation of pipelines in New South Wales.	Review was completed, finding that the legislation did not contain any significant anticompetitive provisions.	No reform is planned.	Meets CPA obligations (June 2001)
Victoria	*Energy Consumption Levy Act 1982*			Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gas Industry Act 1994* and Amendment Acts	Provide for: (1) a licensing regime administered by the Office of Regulator-General; (2) market and system operation rules for the Victorian gas market; (3) cross-ownership restrictions to prevent re-aggregation of the Victorian gas industry; and (4) prohibitions on significant producers (the Bass Strait producers) engaging in anticompetitive conduct.	In June 2003 the Essential Services Commission completed a review of, and recommended the repeal of the significant producer provisions of the *Gas Industry Act 2001*.	The *Gas Industry Act 1994* was replaced by the *Gas Industry Act 2001* and the *Gas Industry (Residual Provisions) Act 1994* on 1 September 2001. The Gas Industry Act gives effect to the implementation of full retail contestability. The Gas Industry (Residual Provisions) Act contains provisions of historical import, particularly the restructure and privatisation of the gas industry. Victoria repealed the significant producer provisions through the *Energy Legislation (Regulatory Reform) Act 2004*, which was given royal assent on 25 May 2004. The 'safety net' provisions, which include interim reserve price regulation power, will be reviewed before their scheduled expiry on 31 December 2004.	Meets CPA obligations (June 2003)
	Gas Safety Act 1997 and Regulations	Introduce new restrictive regulations in relation to the Gas Appeals Board, gas installations, and gas quality and safety. Uniform gas quality specifications aim to ensure gas in distribution pipelines is safe for end use.		Efforts were made to minimise compliance costs by limiting the scope of restrictions to minimum functional requirements and avoiding the prescription of style or format. No further reforms are planned.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Petroleum (Submerged Lands) Act*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Victoria amended the Act to reflect Australian Government amendments in the autumn 2004 Parliamentary sitting. It will rewrite the Act in 2005 following the rewrite of the Australian Government's petroleum (submerged lands) legislation.	Review and reform incomplete
	Petroleum Act 1958			Act was repealed and replaced by the *Petroleum Act 1998*. New Act retains Crown ownership of petroleum resources and permits a lease system, and removes obstacles to exploration, production and administrative efficiency.	Meets CPA obligations (June 1999)
	Pipelines Act 1967	Regulates the construction and operation of pipelines in Victoria.	An initial review was completed in February 1997. The government released its response in 2002. It is now undertaking a broader review of the Act.	Victoria expects to complete the second review in 2004 and implement changes by 2005. It proposes to take account of the recommendations from both reviews in developing draft legislation.	Review and reform incomplete

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Gas Act 1965* and Gas Regulations 1989	Establishes a virtual statutory monopoly via provisions to grant gas franchises and to require government approval of large contracts. Enables the government to restrict gas supply in emergencies, and allows the Gas Tribunal to recommend price restrictions.	Queensland reviewed the *Petroleum Act 1923* in conjunction with the *Gas Act 1965*. The review covered those parts of the two Acts that were not the subject of the national review of the *Petroleum (Submerged Lands) Act*.	Queensland drafted the Gas Supply Bill to replace the existing Act. The Gas Supply Bill regulates distribution pipeline licensing, retail sale of fuel gas and insufficiency of supply. The Gas Supply Bill was passed by Parliament and became operational on 1 July 2003.	Meets CPA obligations (June 2003)
	Gas Suppliers (Shareholding) Act 1972	Statutory limitation on the level of ownership of shares in a nominated gas supplier.	Review not undertaken.	Act was repealed in October 2000.	Meets CPA obligations (June 2001)
	Petroleum Act 1923		Act was reviewed in conjunction with the Gas Act (see above).	Both the *Petroleum and Gas (Production and Safety) Bill 2004* and *Petroleum and other Legislation Amendment Bill 2004* were passed on 29 September 2004, received assent on 112 October 2004 and will be fully operational by the end of 2004. The *Petroleum Act 1923* will continue for selected authorities to prospect and petroleum leases.	Meets CPA obligations (October 2004)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Petroleum (Submerged Lands) Act 1982*	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	The Amendment Bill was introduced into Parliament in August 2004 and is expected to be passed by the end of 2004. Queensland will rewrite the Act in 2005 following the rewrite of the Australian Government Act.	Review and reform incomplete
Western Australia	Dampier-to-Bunbury Pipeline Regulations 1998		No review undertaken.	Regulations were repealed on 1 January 2000.	Meets CPA obligations (June 2001)
	Energy Coordination Act 1994	Amended to introduce a gas licensing system that provides for the regulation of companies operating distribution systems and supplying gas to customers using less than 1 TJ per year.	Review of new provisions found restrictions were minimal and the most cost-effective means of protecting small customers.	No reform is planned.	Meets CPA obligations (June 2001)
	Energy Operators (Powers) Act 1979 (formerly *Energy Corporations (Powers) Act 1979*)	Provides monopoly rights over the sale of LPG and provides energy corporations with powers of compulsory land acquisition and disposal, powers of entry, certain planning approval and water rights, and indemnity against compensation claims.	Review was completed in 1998. It recommended removing the monopoly over sale of LPG and retaining the land use powers of energy corporations. Land use powers are necessary to facilitate energy supply.	Restrictions on LPG trading were lifted with the enactment of the *Energy Coordination Amendment Act 1999* and *Gas Corporation (Business Disposal) Act 1999*.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Gas Corporation Act 1994*	Creates the Gas Corporation to run certain publicly owned gas assets.		Act was repealed December 2000.	Meets CPA obligations (June 2001)
	Gas Transmission Regulations 1994	Access provisions.		Regulations were repealed. Access and related matters are now regulated under the *Gas Pipelines Access (WA) Act 1998*.	Meets CPA obligations (June 2001)
	North West Gas Development (Woodside) Agreement Act 1979		Not for review.	Act was repealed and replaced by the 1994 Act of same name (see next entry).	Meets CPA obligations (June 1999)
	North West Gas Development (Woodside) Agreement Amendment Act 1994	Differential treatment.	Review completed in 1998.	Act was retained without reform in view of sovereign risk implications of unilateral amendment or repeal.	Meets CPA obligations (June 1999)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Petroleum Act 1967*	Regulates exploration for, and the development of, onshore petroleum reserves.	The government endorsed a review of the Act in February 2003. The review recommended that the findings of the national review of submerged lands Acts be implemented, and that potentially restrictive provisions in the Act be retained on the grounds that they do not restrict competition and provide a net public benefit. The government will further review the Act following completion of amendments to submerged lands legislation.	See *Petroleum (Submerged Lands) Act 1982* and Regulations	Review and reform incomplete

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Petroleum (Submerged Lands) Act 1982* and Regulations	Regulate exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Western Australia is awaiting the passage of new legislation by the Australian Government (expected in late 2004) before amending its own legislation.	Review and reform incomplete
	Petroleum Pipelines Act 1969 and Regulations	Regulate the construction and operation of petroleum pipelines in Western Australia.	Review was completed in 2001. Recommended one amendment with respect to issuing pipeline licences.	Review recommendation is to be implemented via legislative amendment.	Meets CPA obligations (June 2001)
South Australia	*Cooper Basin (Ratification) Act 1975*	Ratifies the contract for the supply of gas by Cooper Basin producers to AGL.	Review was completed, finding substantial public benefits in continuing granted concessions and exemptions on grounds of sovereign risk.	Amendments to be introduced to Parliament in mid-2003.	Meets CPA obligations (June 1997)
	Gas Act 1997	Provides for separate licences to operate pipelines and to undertake gas retailing.	Review in 1999 found restrictions to be in the public interest.	No reform is planned.	Meets CPA obligations (June 1999)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Natural Gas (Interim Supply) Act 1985*	Provides for Ministerial power to restrict the production and sale of gas from outside the Cooper Basin, determine the use of ethane from the basin, and restrict the Natural Gas Authority from interstate trading in gas.	Review was completed in 1996.	Key restrictions were repealed in 1996.	Meets CPA obligations (June 1997)
	Natural Gas Pipelines Access Act 1995	Establishes the access regime for natural gas pipelines in South Australia.		Act was repealed by s. 50 of the *Gas Pipelines Access (South Australia) Act 1997*.	Meets CPA obligations (June 1999)
	Petroleum (Submerged Lands) Act 1982	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	South Australia is awaiting the passage of new legislation by the Australian Government (expected in late 2004) before amending its own legislation.	Review and reform incomplete

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Petroleum Act 1940*	Regulates onshore exploration for and development of petroleum reserves.		Act was replaced by the *Petroleum Act 2000*. The new Act incorporates principles proposed by the ANZMEC Petroleum Sub-Committee in regard to acreage management. The government directed efforts to facilitate new explorers entering Cooper Basin and to encourage the development of a voluntary access code for access to production facilities.	Meets CPA obligations (June 2001)
	Santos Limited (Regulation of Shareholdings) Act 1989	Restricts any one shareholder from having more than a 15 per cent shareholding in Santos Limited.	Review was completed in July 2001.	In July 2001, the government announced that it had considered the findings of the independent review and resolved to make no change to the Act. The government considered that the benefits of the restrictions outweighed the costs, and that the objectives of the legislation could be achieved only through restrictions on competition. The main reason is the importance to South Australia of gas supply from the Cooper Basin where Santos has a majority interest in the production of gas.	Meets CPA obligations (June 2002)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Stony Point (Liquids Project) Ratification Act 1981*	Authorises behaviour contrary to the TPA.	Review was completed in October 2000. It concluded, given that many of the benefits to the producers constituted past or historic benefits, that no significant continuing effect would amount to a restriction on competition. No reform was recommended.	No reform is planned.	Meets CPA obligations (June 2002)
Tasmania	*Gas Act 2000*	Regulates the distribution and retailing of gas in Tasmania. It includes provisions for the appointment of the Director of Gas and the Director of Gas Safety and for the licensing of gas distributors and retailers.	Assessed as complying with the legislation review program gatekeeper requirements.	The Act has been amended several times to address issues arising from the development of the state's natural gas industry. Tasmania expects further amendments in 2004.	Meets CPA obligations (October 2004)
	Gas Franchises Act 1973			Act was repealed.	Meets CPA obligations (June 2001)
	Hobart Town Gas Company's Act 1854			Act was repealed	Meets CPA obligations (June 2001)
	Hobart Town Gas Company's Act 1857			Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Launceston Gas Company Act 1982*	Gives the Launceston Gas Company powers that are not available to potential competitors in the gas supply market — for example, the power to 'break up public roads' without council approval, needing to give only 24 hours notice.		Act was substantially amended by new legislation. Remaining sections are to be repealed once an accurate map of the pipeline network has been completed.	Review and reform incomplete
	Petroleum (Submerged Lands) Act 1982	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	Tasmania introduced an amendment Bill to Parliament in April 2004, including amendments in anticipation of the proposed new Australian Government Act.	Review and reform incomplete
ACT	*Essential Services (Continuity of Supply) Act 1992*		Review not required.	Act was repealed and replaced by the *Utilities Act 2000*.	Meets CPA obligations (June 2001)
	Gas Act 1992			Act was repealed.	Meets CPA obligations (June 1999)
	Gas Levy Act 1991			Act was repealed in 1998.	Meets CPA obligations (June 1999)
	Gas Supply Act 1998			Act was repealed and replaced by the *Utilities Act 2000* and the *Gas Safety Act 2000*.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Energy Pipelines Act*	Establishes the regulatory framework for the construction, operation and maintenance of energy pipelines in the Northern Territory.	Review was completed and found anticompetitive provisions in the Act were justified in the public interest. Impact of restrictions was considered to be low. Approaches such as negative licensing, co-regulation and self-regulation were rejected as being unlikely to achieve the objective of the Act more efficiently than the existing legislative framework achieves it.	No reform is planned.	Meets CPA obligations (June 2001)
	Oil Refinery Agreement Ratification Act	Imposes conditions on the Mereenie Joint Venture in relation to the proposed oil refinery in Alice Springs. Refinery was not constructed because it is uneconomic, so legislation is of no practical effect.	Review was completed. Act is not considered to be anticompetitive.	Act was repealed effective November 2002.	Meets CPA obligations (June 2003)

(*continued*)

Table 7.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Petroleum Act*	Regulates onshore exploration and recovery of petroleum in the Territory; grants exclusive rights; and provides for technical and financial prescriptions.	Review was completed in 2002.	Some recommendations were implemented by the *Petroleum Amendment Act 2003*. The Territory drafted a second Bill to implement the remaining recommendations, which it expected to introduce to Parliament in 2004.	Review and reform incomplete
	Petroleum (Submerged Lands) Act	Regulates exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme.	National review was completed in 1999-2000 and endorsed by ANZMEC Ministers.	The Territory is likely to await the completion of Australian Government amendments before amending its own legislation.	Review and reform incomplete
	Petroleum (Prospecting and Mining) Act			Act was repealed by the *Petroleum Act*.	Meets CPA obligations (June 1999)

8 National road transport reform

Each state and territory is responsible for road transport regulation in its jurisdiction. This approach led to diverse regulations for driver and vehicle operations and standards, weights and dimensions. In the early 1990s, governments agreed to measures to address the differences in regulation, establishing the Heavy Vehicles Agreement and the Light Vehicles Agreement in 1991 and 1992 respectively. The former agreement provides for the development of uniform or consistent national regulatory arrangements for vehicles over 4.5 tonnes gross mass; the latter extends the national regulatory approach to cover light vehicles.

The National Road Transport Commission developed the initial national road transport reform package, comprising 31 initiatives (reform areas) in six modules: (1) registration charges for heavy vehicles; (2) transport of dangerous goods; (3) vehicle operations; (4) heavy vehicle registration; (5) driver licensing; and (6) compliance and enforcement. The Australian Transport Council oversees implementation of the reforms. The Council of Australian Governments (CoAG) endorsed a framework comprising 19 of the 31 reform areas, criteria for assessing reform implementation, and target dates for the 1999 National Competition Policy (NCP) assessment, along with another framework comprising six reform areas for the 2001 NCP assessment.

Governments have not listed several reform areas from the original package — notably, the speeding heavy vehicle policy and the higher mass limits reform areas — for assessment under the NCP (although some governments have implemented these reform areas in part or in whole). Governments have also not listed for NCP assessment the national road transport reforms (such as the second and third heavy vehicle reform packages) developed subsequent to the original six-module package.

Governments did not endorse a road transport reform framework for the 2002 and subsequent NCP assessments. The National Competition Council has assessed road transport reform implementation in the 2004 NCP assessment, however, considering governments' progress in undertaking reforms that were not implemented or operational at the time of the 2003 NCP assessment. In the 2003 assessment, the Council found that:

- New South Wales, Victoria, Queensland, South Australia, Tasmania and the Northern Territory had completed all NCP road transport reform obligations at 30 June 2002

- Western Australia, the ACT and the Australian Government were continuing to implement those reforms for which they had not met completion targets advised in earlier NCP assessments. These incomplete reforms (only four), related to the 1999 NCP framework.

Given that governments had demonstrated significant progress, the Council considered that additional time to complete the reform programs was warranted. It decided to re-assess implementation in the 2004 NCP assessment. Table 8.1 lists the 1999 reforms outstanding at 30 June 2003 and notes actions that jurisdictions have since taken.

Table 8.1: Incomplete or delayed 1999 NCP reforms, 30 June 2003

Jurisdiction	*Reform number and projection (actual or projected date)*	*Action taken or required to complete reform*
Western Australia	3 Driver licensing (spring 2003)	Final amendments to the Act and Regulations are expected to be introduced to Parliament in spring 2004.
	9 One driver/one licence (spring 2003)	Final amendments to the Act and Regulations to are expected to be introduced to Parliament in spring 2004.
ACT	2 Heavy vehicle registration scheme (January 2004)	The Legislative Assembly rejected Regulations implementing continuous registration. The ACT Government is considering alternative means of enforcing timely renewals of registration.
Australian Government	2 Heavy vehicle registration scheme (2003-04)	The Australian Government has delayed this reform pending a review of the Federal Interstate Registration Scheme.

The overriding consideration for the Council in the 2004 NCP assessment has been the importance of a common regulatory platform consistent with the Australian Transport Council assessment frameworks. For a government to have been assessed as fully complying, it needed to have made by 30 June 2004 its agreed contribution to achieving the common platform. Except for formal exemptions or accepted alternatives, jurisdictions must have implemented all elements of the assessment frameworks for the reform to have been assessed as complete.

Implementation of reforms outstanding at 30 June 2003

Accounting for the formalised and practical exemptions from the road transport reform program, the Council considers that governments had satisfactorily implemented 188 of 192 assessable reforms (98 per cent across all jurisdictions) at 30 June 2004.

Of the 147 reforms in the 1999 NCP framework across all jurisdictions, 143 (97 per cent) were satisfactorily implemented at 30 June 2004.

- Western Australia has two remaining reforms that it had expected to introduce to Parliament in autumn 2004.

- The Australian Government is awaiting the outcomes of a review of the Federal Interstate Registration Scheme (FIRS) before it completes its reform. The FIRS is generally consistent with the Heavy Vehicle Registration Scheme, and the variations have not given rise to any issues.

- In 2001, the ACT Legislative Assembly disallowed the Regulation that would have introduced continuous registration of heavy vehicles, and the Assembly Estimates Committee criticised a 2003 budget proposal to implement continuous registration as being a revenue raising measure. The ACT Government is considering alternative means of fulfilling this road transport reform, including the optimal use of technology to detect unregistered vehicles. The ACT intends to implement the non-legislative elements of this reform package shortly, and the legislative elements as soon as possible this year.

All of the 45 reforms in the 2001 NCP assessment framework had been implemented by 30 June 2003. Western Australia and the Northern Territory completed their reform obligations after the 2002 NCP assessment. New South Wales and Victoria have continued to progress towards their 2006 target completion of changes to street signage and continuous centre line markings on roads.

Table 8.2 lists all of the road transport reform areas assessable under the NCP. It indicates the reforms that were incomplete at 30 June 2004, the jurisdictions still to complete these reforms, and the expected completion dates.

Table 8.2: Reform implementation, 30 June 2004

Road reform	*Jurisdiction still to complete implementation (expected completion date)*
1997 NCP assessment framework	
First heavy vehicle registration charges determination	
1999 NCP assessment framework	
1 Dangerous goods — nationally consistent registrations and code	
2 Heavy vehicle registration schemes — national consistency	The ACT (2004-05) and the Australian Government (2004-05)
3 Driver licensing — uniform classes, procedures, renewals, cancellations, medical guidelines, exemptions, demerit points etc.	Western Australia (spring 2004)
4 Vehicle operations — uniform mass and load registrations, consistent oversize/overmass regulations/exemptions/pilots/escorts, restricted access vehicle	
5 Uniform heavy vehicle standards (superseded by combined vehicle standards)	
6 Truck driving hours	
7 Bus driving hours	
8 Common mass and load rules — axle mass spacing schedule up to 42.5 tonnes gross vehicle tonnes for 6 axles; 62.5 tonnes for tri-tri-B-doubles; set fines for exceeding these limits	
9 One driver/one licence	Western Australia (spring 2004)
10 Improved network access — expanded gazetted rotes for B-doubles and approved large vehicles (road trains and 4.6-metre-high trucks) in lieu of permits	
11 Common pre-registration standards — nationwide acceptance to enable trucks to be sold and used in any jurisdiction	
12 Common roadworthiness standards — mutual recognition of standards and enforcement practices	
13 Safe carriage and restraint of loads	
14 National bus driving hours	
15 Interstate conversions of driver licences free of cost	
16 Alternative compliance — support for trial and endorsement of model legislation for mass and maintenance management	
17 Three-month and six-month short term registration	

(*continued*)

Table 8.2 continued

Road reform	*Jurisdiction still to complete implementation (expected completion date)*
18 Driver offences/licence status — information provision to employers with employee's consent	
19 National exchange of vehicle and driver information system, stage 1 — in-principle agreement to link driver and vehicle information nationally	
2001 NCP assessment framework	
1 Combined vehicle standards — uniform vehicle design and construction standards	
2 Australian road rules — national rules obeyed by all road users	
3 Combined truck and bus driving hours — nationally consistent driving hours (14 hours, including 12 in any 24-hour period etc.); chain of responsibility (extended offences) provisions; transitional fatigue management scheme etc.	
4 Consistent on-road enforcement of roadworthiness — written warning, minor defect notice, major defect notice	
5 Second heavy vehicles registration charges determination	
6 Rear axle mass increase of 1 tonne for ultra-low-floor buses within the overall 16 tonne gross vehicle mass limit	

The Council urges the Australian Government, Western Australia and the ACT to complete their reforms.

9 Review and reform of legislation

The Competition Principles Agreement (CPA) obliges governments to review and, where appropriate, reform legislation that restricts competition. The guiding principle embodied in CPA clause 5(1) is that restrictions on competition should be removed unless it can be demonstrated that restricting competition benefits the community overall (being in the public interest) and is necessary to achieve the objectives of the legislation.

The CPA clause 5 also obliges governments to:

- review, at least once every 10 years, any restrictive legislation against the guiding principle to ensure regulation is relevant given changes in circumstances and/or in government and community priorities;

- ensure new legislation that restricts competition is consistent with the clause 5(1) guiding principle (see chapter 4).

By requiring the review of the stock of legislation and of all continuing and future legislation containing restrictions on competition, CPA clause 5 provides a 'cradle to grave' cycle of scrutiny.

CPA clause 5 originally set a target date of 2000 for governments to complete review and reform of all existing legislation containing restrictions on competition. In November 2000, the Council of Australian Governments (CoAG) extended the deadline to 30 June 2002, with one exception: CoAG agreed that satisfactory implementation of reforms may include a firm transitional arrangement beyond the deadline, provided the arrangement is supported by evidence of a public interest. For the National Competition Council to accept that a phased (or deferred) reform is in the public interest, a government must show evidence of a robust public interest assessment arising from a properly constituted review process. The NCP agreements make no provision for the Council to accept other mitigating circumstances, such as the failure of legislation to pass through hostile upper houses of Parliament.

In 2002, for reasons linked to the timing of the annual NCP assessments and governments' NCP reporting obligations, the Council provided a further year's extension for completion of the legislation review program and advised all governments that:

> *Review and/or reform activity that is incomplete or not consistent with NCP principles at June 2003 will be considered to not comply with NCP obligations. Where noncompliance is significant, because it involves an important area of regulation or several areas of regulation,*

> *the Council is likely to make adverse recommendations on payments.* (NCC 2002, p. xvi)

For the 2003 NCP assessment the Council recommended penalties on all state and territory governments for failure to complete review and reform activity by the extended deadline (see below).

Assessing compliance

The Council considers review activity and reform implementation when assessing governments' compliance with the NCP. It looks for transparent, robust and objective reviews, because these increase the likelihood of policy outcomes that are in the public interest. The Council also looks for governments to implement review recommendations expeditiously, unless a government can demonstrate that review recommendations are not in the public interest.

High quality reviews of legislation contribute to well-considered, effective policy outcomes. Taking into account the guidance provided by CoAG at its November 2000 meeting, the Council's approach in assessing compliance with CPA clause 5 is to look for evidence that reviews:

- had terms of reference based on CPA clause 5(9)
- were conducted by a review panel able to undertake an independent and objective assessment of all matters relevant to the legislation under review, including restrictions on competition and public interest matters
- provided for public participation (including by interested parties)
- assessed all costs and benefits of competition restrictions and considered alternative means of achieving the objective of the legislation
- considered all relevant evidence
- demonstrated a net public benefit when recommending that a government introduce or retain restrictions on competition.

To test whether restrictions on competition are warranted, governments need to consider the (non-exhaustive) public interest factors in CPA clause 1(3). Any restrictions must benefit the whole community, not just particular groups. The Council encourages governments to make their review reports publicly available.

The CPA guiding principle does not mean that governments must always conduct a full public review before reforming restrictions. Governments sometimes repeal redundant legislation after preliminary scrutiny shows that the legislation provides no public benefit. Such action meets the CPA

objectives. Similarly, a government may choose to disregard a review recommendation supporting a restriction or seek to achieve policy outcomes via an approach other than that recommended by a review. Where a government does not implement the recommendation of a properly constituted rigorous review, however, the Council looks for the government to provide a robust net community benefit argument, demonstrating why the approach recommended by the review was inappropriate.

Passage, assent and proclamation

In previous NCP assessments, the Council has, where relevant, considered reforms to be implemented once amending legislation has passed through Parliament. Exceptions to this practice include instances where an Act has come into effect but key regulations and guidelines have not been developed. Where such regulations or guidelines relate to material matters, the Council considers the reform incomplete — for example, although Western Australia's *Grain Marketing Act 2002* was passed in November 2002, the Council assessed in 2003 that the state was yet to meet its NCP obligations because regulations and Ministerial guidelines were being developed (see chapter 15).

Typically, Acts come into effect on the day of royal assent, on a date specified in the Act or on a day to be proclaimed by a Governor or Administrator. Alternatively, if none of these situations arise, an Act may commence 'automatically' after a given period — for example, 28 days after the royal assent in the Australian Government jurisdiction. However, the Council has recently noted some deviations from these standard practices, including part proclamation of Acts and moratoriums on particular sections. New South Wales, for example, informed the Council that it had proclaimed its reforming veterinary legislation, but failed to note that it also had instituted a moratorium on the section of the Act that addressed the primary restriction on competition — in this particular case, the section does not come into effect for at least one year.

Such instances have necessitated the Council more closely scrutinising the date of effect for new legislation. However, although the Council is now less sanguine about regarding the passage of legislation through Parliament as the compliance benchmark, it has continued to accept this benchmark for this 2004 NCP assessment, except where the competition restrictions relate to higher priority legislation or in cases of deliberate obfuscation. Any compliance finding is also contingent on governments implementing the legislative reforms; where they do not, the Council will revoke the positive compliance finding.

Penalty recommendations

The Council assesses governments' review and reform of their priority and nonpriority legislation.[1] In accordance with past practice, the 2003 NCP assessment focused on governments' review and reform performance in the priority areas, and the recommended deductions and suspensions of competition payments were based on compliance failures in these areas.

The Council adopted a more expeditious process in assessing governments' obligations to review and reform nonpriority legislation. This approach reflects the likelihood that such legislation involves 'lower order' restrictions on competition and that the Council's resources are used more effectively in engaging with governments to progress reforms in the priority matters.

In the 2003 NCP assessment, the Council determined that for jurisdictions to be assessed as meeting CPA obligations:

- the review and, where appropriate, reform of a particular piece of legislation met fully the CPA clause 5(1) guiding principle
- the review and reform activity was consistent with the CPA clause 5(1) guiding principle, but reform was yet to be completed because it involved a transitional implementation program, supported by a robust public interest test extending beyond 2003.

In many instances, outcomes were not consistent with the obligations under CPA clause 5(1). In other cases, noncompliance was the result of a government not meeting the (extended) deadline of 30 June 2003. Where review and reform activity was incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes, the Council excluded these matters from its consideration of penalty recommendations.

In making its recommendations on competition payments, the Council judged the *significance* of each compliance failure based on the relative importance of a compliance breach's impacts on the community and economy, and on CoAG's direction that the Council account for each state or territory's overall commitment to NCP.

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[1] Recognising the resource demands on governments from completing reviews and implementing reforms, the Council considered that the greatest benefit to the community would arise from prioritising review and reform activity to address those restrictions with a greater impact on competition. In 2001, the Council identified priority areas of regulation likely to have nontrivial impacts on competition (see box 4.2 in vol. 1 of the 2003 NCP assessment — NCC 2003). The prioritisation process means the Council scrutinises around 800 pieces of priority legislation and monitors review and reform activity for a further 1000 nonpriority areas.

Based on its judgment about the significance of each compliance failure, the Council determined in the 2003 NCP assessment whether the recommended penalty should take the form of a specific deduction or suspension, or whether the compliance failure should be accounted for in a general pool suspension.

- **Permanent deductions** are irrevocable reductions in governments' competition payments. In 2003, the Council recommended permanent deductions for specific compliance failures. If the relevant governments have not improved compliance in these areas for this 2004 NCP assessment, the Council may recommend that the deductions be ongoing.

- **Specific suspensions** are a temporary hold on competition payments until a government completes its compliance efforts in a particular area. In 2003, suspensions were recommended to apply until the relevant governments met pre-determined conditions, at which time the suspended 2003-04 competition payments would be released. Where commitments have not been made or met for this 2004 NCP assessment, or reform action has not been implemented, the Council may recommend that the suspended payments be withheld permanently.

- **Pool suspensions** apply to a pool of outstanding compliance failures. If satisfactory progress has been made to improve compliance for this 2004 NCP assessment, the Council may recommend that the 2003 suspension be lifted or reduced, and that the funds be released to the relevant jurisdiction. If satisfactory progress has not been made, the Council may recommend that all or part of the suspension be converted to a permanent deduction from competition payments.

The Australian Government announced on 8 December 2003 that it had accepted the Council's penalty recommendations.

Developments since the 2003 NCP assessment

This 2004 NCP assessment considers the actions of governments over the past 12 months in the areas of noncompliance identified in the 2003 NCP assessment. Table 9.1 compares legislation review and reform outcomes in 2003 and 2004, indicating (in broad terms) the progress that has been made.

In interpreting the data, there are some important caveats:

- The estimates reflect the different treatment of legislation across jurisdictions — for example, a 'Chiropractors and Osteopaths Act' in a jurisdiction would be counted once, whereas separate legislation for each profession in another jurisdiction would be counted twice.

- In some cases, a jurisdiction's review and reform activity for one issue might encompass several pieces of legislation — for example, the review and reform of the Australian Government's superannuation legislation involved 10 pieces of separate legislation.

Table 9.1: Overall outcomes with the review and reform of legislation[a]

	Proportion of priority complying (%)		*Proportion of non-priority complying (%)*		*Proportion of total complying (%)*	
	2003	*2004*	*2003*	*2004*	*2003*	*2004*
Australian Government	33	***60***	66	***77***	51	***70***
New South Wales	69	***83***	79	***84***	73	***83***
Victoria	78	***84***	83	***86***	81	***85***
Queensland	61	***83***	92	***92***	71	***86***
Western Australia	31	***46***	54	***73***	44	***62***
South Australia	37	***60***	82	***90***	63	***77***
Tasmania	77	***82***	90	***95***	84	***89***
ACT	59	***81***	97	***98***	85	***93***
Northern Territory	47	***79***	83	***90***	62	***83***
Total	56	***74***	81	***87***	69	***81***

a Includes the stock of legislation identified by jurisdictions in their original legislation review schedules, jurisdictions' periodic additions, and legislation containing restrictions on competition identified by the Council. Excludes water related legislation, apart from three pieces of such legislation that include matters relevant to non-water legislation areas. Excludes legislation specific to electricity, gas and road transport (except where, for example, it relates to professions such as electricians and gasfitters), which are treated separately in chapters 6, 7 and 8 respectively.

Given that such considerations can skew outcomes, the Council does not place undue emphasis on small deviations in compliance ratios across jurisdictions.

It is apparent from table 9.1 that most governments made sound progress in the past year. For priority legislation, the increased rate of compliance since the 2003 NCP assessment is marked — particularly given that the more difficult reforms have often been left too late in the review and reform timetable. The recent history of overall compliance rates for priority legislation across all jurisdictions is:

- 2001 — 20 per cent
- 2002 — 40 per cent
- 2003 — 56 per cent
- 2004 — 74 per cent.

Those jurisdictions that have historically performed poorly relative to others continue to do so, with Western Australia having completed under half of its priority legislation review and reform program to date. The Australian Government and South Australia also continue to lag below the average. That

said, all three jurisdictions have improved significantly since the 2003 NCP assessment.

Tables 9.4–9.12 at the end of this chapter contain all of the legislation review and reform areas that were subject to specific suspensions, permanent deductions or pool suspensions in the 2003 NCP assessment. Shading in the tables denotes legislation that was deemed noncompliant in 2003 but has now been assessed by the Council as meeting NCP obligations.

Chapters 10–18 provide the detail underlying the 2004 NCP assessments for the outstanding areas. These chapters deal only with the progress of the review and reform of legislation assessed in 2003 as not meeting NCP obligations. Legislation review and reform areas assessed in previous years as meeting NCP obligations are detailed in the 2003 NCP assessment.

Difficult reform areas

This section discusses areas in which reform of anticompetitive legislation has been difficult to assess, subject to reneging on commitments, inordinately slow or suggesting a tension between social policy and competition policy objectives. The discussion underpins the Council's assessments (detailed in chapters 10–18) of governments' progress in these areas.

Agricultural marketing single desks

One area of the NCP that has attracted much controversy is the review of legislation underpinning export 'single desks' for agricultural commodities. Proponents of export single desks argue that this area of commerce should be excised from the NCP program because extracting higher prices from foreign customers is unequivocally in the national interest. For this reason, they argue that it is against the national interest for Australian exporters to undercut each other in the international marketplace. Based on this premise, there has been a concerted campaign to stop the South Australian Government from implementing the recommendations of its two independent reviews of the barley single desk, and also a rearguard action to constrain the reforms implemented under the Western Australian grains legislation. A key question, therefore, is whether the above premise has substance.

There is no debate that a case for restricting competition in export marketing may exist where Australia can extract price premiums in overseas markets, such as where:

- a country's demand for imports from Australia is relatively insensitive to price, supply from competing sources is constrained, and there are limited substitute products

- a country imposes a quota on imports of the product(s) from Australia.

In either case, restricting competition among rival Australian exporters can raise national income. The impact of export single desks, however, may not be confined to export markets — for example, export single desks can:

- reward lower valued products at the expense of higher valued products, discouraging more efficient and innovative growers through the pooling of export returns and the limited recognition of quality and product differentiation

- foster inefficient practices throughout the supply chain via the pooling of transport, storage and handling costs

- limit the availability of risk-spreading opportunities (such as forward contracts and cash prices) for producers and competing domestic marketers alike

- increase domestic commodity prices (where export pool returns include premiums) penalising domestic users, such as livestock industries

- allow poor service to growers to persist longer because growers have less opportunity to take their business elsewhere.

Export single desks are in the overall public interest where the additional income from exports exceeds any income forgone in other export markets and any productivity losses in Australia. The role of NCP reviews is to garner the evidence of all of the potential benefits and costs, consider alternatives and recommend where the public interest lies.

Some reviews have found export single desks to be in the public interest, such as the 1996-97 review of Queensland's raw sugar single desk and the 1996 review of the rice single desk in New South Wales. These single desks have thus continued. Other reviews have recommended retaining an export single desk but allowing competition in exporting to markets where the single desk has no pricing power. As a result of Western Australia's 2002 review of its grain export monopoly, for example, the export of barley, canola and lupins in bags and containers was deregulated. In addition, an independent authority was established to allow bulk grain exports that do not threaten the single desk's pricing power. After one year of operations, it is apparent that reform has benefited growers:[2] cash prices paid to growers lifted noticeably following

[2] This is consistent with outcomes in Victoria when that state removed its barley marketing monopoly. Growers subsequently enjoyed many more risk management options, with a variety of forward cash offers available in addition to traditional pools, allowing growers to better align marketing risk with their cropping programs and preferences. Deregulation has also been associated with investment in new, more efficient storage and handling facilities in regional areas. Evidence indicates that the prices offered to barley growers in Victoria have generally exceeded those in New South Wales and South Australia.

the introduction of special export licences, and around 10 per cent of growers took the opportunity to sell grain to the new exporters (NFF 2004). The export single desk and growers that deliver to it have not been adversely affected.

Other reviews, however, have not found that single desks are in the public interest — for example, Victoria and Queensland removed their barley export single desks. Nevertheless, the former single desk operators, ABB Grain in Victoria and GrainCorp in Queensland (formerly Grainco), continue to enjoy strong farmer support, in part because they are providing competitive prices and services. By contrast the New South Wales Grains Board, which enjoyed single desk rights on a wide variety of grains, failed due to mismanagement, leaving growers with no buyer just before harvest — illustrating the all-eggs-in-one-basket risk that single desks pose to farmers.

These examples show that NCP does not sacrifice well-performing export single desks for the sake of domestic deregulation. In contrast, the Australian Government's decision to not subject its wheat marketing restrictions to re-review after the 2000 NCP review found the arrangements were not in the public interest, has discouraged some states from proceeding with recommended reforms.

Pharmacy

In 1999 CoAG commissioned a national review of governments' pharmacy legislation (the Wilkinson Review — see chapter 19). The review recommended lifting restrictions on the number of pharmacies that a pharmacist can own and continuing to allow friendly society pharmacies to own pharmacies, but prohibiting the entry of friendly societies in jurisdictions where they do not already operate. The review also recommended retaining the restriction that only pharmacists can own pharmacies, but added that a jurisdiction that has more competitive arrangements in place 'should not be compelled to extend that regulation' (Wilkinson 2000, p.19).

CoAG referred the review to an intergovernmental working group (the Borthwick working group), which endorsed the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own, but proposed that CoAG reject the recommendation to prevent friendly societies operating pharmacies in jurisdictions where they are not already present. The working group challenged the view that restricting pharmacy ownership to pharmacists is in the public interest.[3] However, it proposed that CoAG accept

[3] The working group found that the review, in coming to the conclusion that restricting pharmacy ownership is in the public interest, was hampered by a lack of evidence and did not appear to examine business ownership in the context of other Australian professions or overseas experience. It also questioned the value of the ownership restrictions given that requirements for pharmacists' supervision of pharmacies already ensure safe pharmacy services.

the recommendation because deregulating ownership in the short term could be too disruptive for the industry.

CoAG endorsed the recommendations of the working group, and the Australian Government affirmed its commitment to the CoAG outcomes in the Third Community Pharmacy Agreement between the Australian Government and the Pharmacy Guild of Australia, in which it was noted that:

> *During the period of this Agreement, the parties are committed to achieving … continued development of an effective, efficient and well-distributed community pharmacy service in Australia which takes account of the recommendations of the Competition Policy Review of Pharmacy and the objectives of National Competition Policy...* (Department of Health and Ageing 2000, p. 8)

Although the working group reported in August 2002, no government had completed the review and reform of its pharmacy legislation at the time of the 2003 NCP assessment.

On 17 February 2004, the New South Wales Government introduced legislation to reform pharmacy regulation consistent with national review outcomes. In response, the Pharmacy Guild of Australia mounted a campaign to attenuate the reforms. On 5 May 2004, the Prime Minister advised the New South Wales Premier that the state would not attract a competition payment penalty if it amended its legislation to:

- increase from three to five the maximum number of pharmacies that an individual pharmacist may own

- permit friendly societies to own and operate up to six pharmacies (Howard 2004a).

The New South Wales Parliament subsequently passed amended legislation that reflected the Prime Minister's advice. Consequently, the reforms fell short of those proposed by the CoAG national review process. Further, restricting friendly societies to six pharmacies represented an increase in restrictions on competition, because no such restriction previously applied.

Several other states and territories also were intending to make CoAG consistent reforms to pharmacy legislation. However, as occurred in New South Wales, the Council is aware of correspondence from the Prime Minister to Premiers and Chief Ministers clarifying the extent to which the national review process could be diluted. This has resulted in the retention and introduction of competition restrictions in pharmacy that have no parallel in any other profession in Australia and for which no objective public interest justification has been provided. Indeed, despite pharmacy ownership restrictions, a Choice September 2004 survey found that the advice given by most surveyed pharmacists was poor and that a limited comparison of medicines revealed that supermarkets were cheaper than pharmacies.

A consequence of the Prime Minister's advice has been observed in the Northern Territory. The Territory's legislation does not contain restrictions on how many pharmacies a pharmacist can own nor does it rule out the ownership of pharmacies by persons other than pharmacists. In this regard, the Wilkinson review stated that:

> … *[w]here a jurisdiction's regulation does not extend as far as the Review's recommended line, that jurisdiction should not be compelled to extend that regulation*. (Wilkinson 2000, p. 19)

In the context of the 2003 NCP assessment, the Council understood that the Territory Government intended to introduce ownership restrictions for pharmacies, with some discretion for the Minister to grant exemptions to the restriction. However, the proposed legislation provided that the Minister could not grant an exemption to friendly societies unless this would meet the needs of the community where the pharmacy business is situated.

As the Territory Government's proposals, by imposing restrictions where none existed, were inconsistent with the outcomes of the Wilkinson Review, the Council requested that the territory provide evidence to demonstrate the net public benefits of the restrictions. The territory therefore completed an independent review of the restrictive provisions. However, following a letter from the Prime Minister that no penalty would attach to the introduction of new restrictions on competition, the territory advised that its independent review report would probably not be released.

Whereas most other jurisdictions responded to the Prime Minister's advice by moderating the degree to which competition restrictions have been removed, the Northern Territory intends to introduce new restrictions that, on the evidence to date, serve the interests of a vested group rather than the community and are inconsistent with CoAG outcomes.

In certain respects, New South Wales, and more so the Northern Territory government positions represent 'backsliding' on pharmacy reforms (see also Queensland assessment).

It is rightly the responsibility of the Australian Government to make determinations on the level of competition payments payable to each jurisdiction. However, under the CPA, the Council has no alternative but to assess governments' progress in implementing recommendations of reviews that meet CoAG requirements for rigour and transparency.

Given the reservations of the Borthwick working group about some of the Wilkinson Review's recommendations, the states' and territories' failure to implement the modest reforms recommended by the national review, and the now widely disparate and non-compliant arrangements applying to the pharmacy sector across Australia, the Council considers it timely for another fully independent and rigorous review covering:

- ownership restrictions and other discriminatory provisions that impede competition by friendly society pharmacies

- the impact of the pharmacy location controls under Australian Government legislation

- the community pharmacy sector's codes of ethics and guidelines which the Productivity Commission considered can restrict price advertising for products for which pharmacists have a monopoly over sale (PC 1999a).

The above considerations relate to the competition impacts of pharmacy regulation. These matters could form part of a broader review extending into other areas.[4] The Council notes that the Australian Government already intends to review pharmacy location controls as part of the negotiation for a Fourth Community Pharmacy Agreement with the Pharmacy Guild of Australia.

Liquor sales

Liquor licensing laws that prescribe accepted community standards relating to alcohol consumption are consistent with the NCP. These include the prescribed minimum age for legal consumption, the requirements that liquor retailers be suitable persons with adequate knowledge of the relevant legislation, and measures to prevent the sale of alcohol to intoxicated persons.

However, other forms of legislation governing the sale of liquor involve competition restrictions. These include:

- limits on market entry by potential sellers — for example, some governments' legislation contains a 'needs test' that requires licence applicants to show that existing outlets do not already adequately serve the area

- discrimination among sellers — for example, in some jurisdictions, hotel bottle shops are permitted to sell packaged liquor on Sundays whereas other liquor stores are not allowed to compete on that day

- market structure — for example, in Queensland, only the holders of a general (hotel) licence can sell packaged liquor to the public. In other states, venues such as cinemas and petrol stations are not permitted to sell liquor — in these latter cases, reviews have found such prohibitions to be in the public interest.

[4] For example, the Productivity Commission (PC 1999a, p. IX) noted that a pro-competitive reform package could involve: the abolition of ownership controls; facilitation of price advertising by pharmacists (including an end to the prohibition on the discounting of patient charges for subsidised PBS drugs); a reduced role for the Australian Government in determining pharmacists' remuneration for dispensing subsidised PBS drugs; and the abolition of controls on new pharmacy approvals and pharmacy relocations.

Several governments faced competition payment penalties from the 2003 NCP assessment for failing to meet their CPA obligations. In some instances, interest groups and individuals reacted by placing media stories to the effect that the NCP would promote unrestricted sales of alcohol and escalate social problems.

In undertaking its assessments, the Council accepts the findings of NCP reviews that needs tests that account for the competitive impact of new entrants on incumbent sellers cannot be justified on public interest grounds. The Council considers needs tests to be the most serious breach of CPA obligations in this area because of the significantly anticompetitive impacts arising from erecting barriers to entry. Governments can, of course, have genuine public interest tests that focus on the social impacts of a liquor licence application: Victoria, Tasmania and the ACT, for example, have different ways of assessing liquor licence applications yet all focus on the social, community and health implications.

Provisions that discriminate among sellers also cannot be justified on public interest grounds. While it might be argued that all sellers of packaged liquor should be prohibited from trading on a certain day, no social objective is served by allowing one class of seller a 'competition free day'.

Queensland's arrangements are somewhat different in that they allow any entity to enter the industry so long as it is prepared to run a hotel. The arrangements are a barrier to entry, particularly for specialist packaged liquor retailers, and increase the costs of doing business.

Taxis and hire cars

State and territory legislation generally provides for taxi licences to be issued infrequently on a discretionary basis. This approach has led to a decline in taxis per head of population. An indication of the regulation-induced scarcity of taxis is the artificially high value attached to taxi licences — often in the range of $200 000 to $300 000. Ultimately, taxi users bear this cost. The adverse efficiency impacts and the transfers from taxi users to licence holders from regulation can be significant. The Victorian NCP review, for example, estimated that the annual cost to the state community of taxi supply restrictions was $72 million, comprising transfers from passengers to plate owners of $66 million and deadweight losses of $6 million. (In addition, low driver remuneration has accompanied high returns to investor plate owners.)

The key competitive restriction on hire cars is the limit on their numbers, although some jurisdictions allow relatively unrestricted entry, possibly to address taxi shortages. Generally, hire cars are prohibited, however, from rank and hail services, so they only compete with taxis only for pre-booked and phone despatch services. Other restrictions include minimum hiring periods and regulated minimum fares set higher than taxi detention rates.

All jurisdictions have reviewed their taxi and hire car legislation. The South Australian and Queensland reviews endorsed the status quo, whereas the Victorian, Western Australian, ACT and Northern Territory reviews recommended removing restrictions on taxi licence numbers and compensating incumbents, in most cases through licence buybacks. The New South Wales and Tasmanian reviews recommended transitional approaches involving annual increases in licence numbers. Despite the evidence that taxi supply restrictions are not in the public interest, governments have found it difficult to make major progress in this area.

The 2002 NCP assessment, while finding that the public interest evidence from governments' NCP reviews supports the immediate removal of supply restrictions, noted that a more gradual transition to open competition could be consistent with CPA clause 5. Accordingly, the Council wrote to all jurisdictions in 2002 to advise that a gradual transition to open competition could be consistent with the NCP if it conformed to the following principles.

1. There should be regular (at least annual) releases of new licences, with sufficient new licences being released to improve the relative supply of taxis in the short term and medium term, given historical demand trends.

2. There should be a commitment to independent and regular monitoring and review of reform outcomes (at least every two to three years), and to additional action if the demand/supply imbalance is not improving.

3. There should be immediate reform of the other chauffeured passenger transport providers (such as hire cars and minibuses) to increase competition.

4. There must be strong commitment that the program of staged licence increases will proceed.

Despite the reform options available, progress has been slow. Victoria has instituted a 12 year program of staged releases of taxi licences equivalent to a 42 per cent increase in numbers over that period. Provided that demand does not outstrip the incremental increases, the community should benefit. Indeed, the Council's relatively low compliance benchmark for taxi reform was set by the positive assessment it afforded Victoria in the 2003 NCP assessment. That assessment recognised Victoria's forward progress in an area in which governments generally lacked the will to implement any meaningful reform. This year, equity of treatment dictates that the benchmark established for Victoria means Western Australia's taxi reform program is sufficient for it to be assessed as (marginally) meeting its CPA obligations.[5] This low benchmark should be perceived as an interim step towards governments better meeting the public interest objectives established by NCP reviews.

[5] Western Australia has adopted a novel approach of intervening in the market as a lessor of taxi licences, setting lease rates that undercut market rates.

Tasmania has instituted a program broadly consistent with the Council's principles, although the reserve price mechanism for licence plate auctions that permit new entrants may delay (backload) the benefits of reform. Apart from this slight reservation, Tasmania's program represents best practice to date. The ACT government proposed a similar approach but encountered resistance from incumbent taxi licence owners and the Legislative Assembly.

This year, New South Wales contended that its NCP review erred in assuming that taxi licences were effectively capped, whereas any person can purchase a licence plate at market value (around $220 000). The Northern Territory in the late 1990s bought back all taxi licences in tandem with opening the market to new participants. Notwithstanding that taxi users continue to pay for this licence buyback, the government subsequently reintroduced entry restrictions. From the community's perspective, it is not clear what benefit was gained from funding the compensation package.

Other jurisdictions have indicated an intention to retain 'demand management' processes, whereby officials determine taxi numbers based on data such as taxi response times and population growth.

The Council considers that taxi reform has been an intractable area for reform. Many of the NCP reviews are now dated and policy relevant developments have occurred overseas. A study in the United Kingdom by the Office of Fair Trading compared and contrasted local taxi licensing authorities that do not apply entry restrictions to the taxi industry with other areas that do. The office was also able to account for the experience of the several local taxi licensing authorities that have moved from restricting taxi licence numbers to de-restricting them in recent years. Based on this 'controlled experiment', the office found that effective quality regulation rather than restricting taxi numbers is the optimal way of ensuring taxi and driver quality and safety. It recommended that quantity controls be repealed.

The Council considers that it may be necessary for an independent agency, like the Productivity Commission, to examine the models adopted across Australia to determine how best to advance the public interest in light of:

- the inability of some governments to institute meaningful reform
- the variations in the reform models being introduced around the country
- the differences in the extent of competition from substitutes (hire cars)
- the claims of New South Wales that its review erred
- the complex issue of compensation for devalued 'property rights'
- industry arguments that de-restriction will lead to poorer service on thin routes and outside of peak times
- the experience of the rapid de-restriction reforms in Northern Territory and subsequent re-regulation

- the evidence from experiences overseas such as New Zealand and the recent Office of Fair Trading study in the United Kingdom.

Fisheries

Primary legislation for fisheries management makes available a 'toolkit' of controls. The application of fisheries management controls in combinations most suited to particular fisheries is usually the province of secondary or subordinate legislation and other regulatory instruments often referred to as management plans. This lower tier of regulation is extensive. It is necessarily subject to regular review and revision in response to challenges such as new information, natural stock variation and technological advances.

In this light, the Council has adopted the following benchmarks for assessing compliance with CPA clause 5 for fisheries management regulation:

- The review of primary fisheries legislation is complete, and recommendations for specific reforms to this legislation have been implemented, except where declined on reasonable public interest grounds.

- Where an NCP review recommended further review of a specific competition issue, that review has been completed and the government has announced a firm implementation timetable for reform (if any).

- A public interest test is built into the normal processes of review and revision of subordinate fisheries legislative instruments.

The review and reform of all of these elements of fisheries legislation is incomplete in most jurisdictions. Some governments have raised with the Council that further reviews are not scheduled for completion for some time owing to informational demands (such as scientific research into fisheries stocks) and the need for effective management to have sufficient industry support that can be assured only via a consultative review process.

Notwithstanding the strength of such arguments and the Council's broad acceptance that some informational requirements and transitional issues revolving around switching from, say, input controls (for example, lobster pots) to output controls (for example, total allowable catch limits) are complex and will require further research and consultation, the Council must assess jurisdictions as failing to meet their legislation review commitments.

Several compliance breaches in this area revolve around timing failures. That said, the Council does not see merit in imposing inflexible timelines on governments where this could promote outcomes that are not in the community's interest because reform implementation has not been able to use the best science. Accordingly, NCP assessments of fisheries legislation recognise that some delays may be unavoidable in certain areas.

Professions and occupations

Laws regulating professions and occupations are a significant element of the review and reform activity by individual governments. In many of these areas, compliant reforms have been completed. However, reforms are still to be implemented in some important areas

Table 9.2 provides a summary of common forms of professional regulation. The models depicted in the table become increasingly stringent, generally in response to the perceived risks to consumers[6] — for example, lawn mowing services are essentially self-regulated, whereas surgeons operate under a reservation of title and practice.

Table 9.2: Models for regulation of professions

Type of restriction	*Explanation*
Self-regulation	There are no occupational licensing or registration laws requiring members to be registered with a statutory body.
Negative licensing	Any person can practise in a self-regulated profession unless placed on a register of persons unable to practice. There is no barrier to entry, but consumers are protected from 'unfit' practitioners.
Co-regulation	Regulatory responsibility is shared by government and the profession. Governments may accredit professional organisations that set membership and disciplinary requirements.
Reservation of title	Particular titles of the profession can be used only by those registered by a relevant board. Unprofessional conduct may lead to deregistration. Title reservation can allow persons who are ineligible to use the title to provide similar services under different title.
Reservation of title and core practices	This category is as above, but with the additional condition that certain risky procedures are restricted by legislation to particular registered professions.
Reservation of title and whole of practice	This category is as above, but with the additional condition that a broad scope of practice may be reserved for particular registered professions.
Ownership restrictions	Only a registered profession can own a business. This restriction applies to pharmacists, but not other practitioners such as doctors, dentists and optometrists.

Regulated professions identified under the legislation review program include several health professions (such as chiropractors, dentists, medical practitioners, nurses, optometrists, pharmacists, physiotherapists, podiatrists, psychologists, occupational therapists, speech pathologists and radiographers), the legal profession and building and development professionals (such as architects, surveyors, engineers, electrical engineers,

6 The table draws from Government of Victoria 2003, pp. 17-23.

plumbers, gasfitters and builders). In addition, regulations governing a diverse group of other professions (such as teachers, real estate agents, conveyancers, valuers, veterinarians, hairdressers, travel agents, employment agents, security agents, auctioneers, motor vehicle traders, driving instructors, pawnbrokers and hawkers) are also subject to regulation.

The Council has identified compliance failures following some governments' reform activity, including some residual ownership restrictions for dental, optometry and veterinary practices. (Ownership restrictions apply in the pharmacy sector too, but the national review recommended that these be retained as an interim measure.) Ownership restrictions that place occupational standing above business acumen impede market entry for innovative service providers and inhibit innovation.

The review and reform of the health professionals in Western Australia and South Australia remain outstanding. The Council also assessed that some jurisdictions failed to meet their CPA obligations because they retained title reservation for occupational therapists and speech pathologists. However, as explained in table 9.2, title reservation is a low grade restriction that is unlikely to have a significant impact.

For the legal profession, the Standing Committee of Attorneys-General recently released a model Bill that will form the basis for improving consistency across jurisdictions. While the Bill does not stem from the NCP, the Council accepts that it will justifiably delay completion of the review and reform of the profession in some areas. One area outside of this national process however relates to the reservation of conveyancing for legal practitioners, as occurs in Queensland. In Victoria, conveyancers can compete only in the non-legal aspects of conveyancing. Similarly, in the ACT, conveyancers may not settle real estate transactions. The Council assesses these restrictions in this 2004 NCP assessment.

Outside the health and some building related trades, the forms of regulation are generally less prescriptive and completion of the review program is mixed. Most jurisdictions have outstanding activity in these areas.

Gambling

Gambling legislation involves a sometimes uneasy incursion of competition principles to an important aspect of social policy. The Council's approach to the main categories of competition restrictions in gambling legislation (summarised in NCC 2003a) is informed by the Productivity Commission's findings in its 1999 report on Australia's gambling industries (PC 1999b). On the basis of those findings, the Council accepts that the public interest can be served by competition restrictions aimed at consumer protection — in some cases, this can extend to restrictions on access.

Given the difficulties of disentangling the legitimate social policy objectives of governments from pro-competitive policymaking, the Council has been

prepared to make concessions. It does not regard the arguments for exclusive licences as convincing, but accepts that exclusive casino licences can make a limited contribution to reducing problem gambling by reducing access to table games. The Council also accepts that the cost of compensating licence holders, where exclusive licences are revoked, may justify a decision not to revoke these licences for the life of the existing restriction. This rationale does not extend to issuing new exclusive licences in areas where competitive provision would achieve benefits without compromising social objectives. Similarly, even where an exclusive arrangement is in the public interest, competition for that 'right' can provide a community benefit without jeopardising the social objective.

Gambling regulation extends to casinos, poker machines, clubs, all forms of on-track racing, general sports betting, internet gaming, totalisators, lotteries and so on. The Council considers that restrictions on competition that confer rights on some at the expense of others, or that provide more favourable arrangements for one class of provider over another, need to be supported by a public interest justification in terms of harm minimisation. The Council accepts, however, that achieving equality of regulation to areas such as gaming machines may be a gradual process, given many jurisdictions' reluctance to increase overall machine numbers.

The Council considers that an enhanced level of interjurisdictional cooperation has the potential to remove some competition restrictions in areas such as totalisators, racing and sports betting and lotteries without adding to harm. Such cooperation will be also necessary to ensure legitimate social policy concerns, rather than the protection of existing interests, underpin restrictions surrounding the introduction of new forms of gambling made possible by technological change.

The Council's approach to assessing governments' compliance with CPA clause 5 obligations relating to gambling legislation is, therefore, tempered by the recognition that pro-competitive objectives may not always sit easily with social objectives, particularly where social objectives are not always clearly enunciated and are still developing.

Insurance services

Compulsory third party (CTP) insurance and workers compensation insurance are mandatory forms of accident insurance. For at least one of these forms of insurance, some governments have legislated for monopoly underwriting by a government-owned entity. This arrangement is the principal restriction with NCP implications. Despite the two types of insurance being similar, New South Wales, Queensland, Western Australia, Tasmania and the Northern Territory license multiple private companies to provide one of these two forms of insurance, but legislate for the monopoly supply of the other form (table 9.3). In addition, all states and territories except the ACT require legal practitioners to insure through a monopoly provider (see chapter 19).

Table 9.3: Provider arrangements for CTP and workers' compensation insurance

Government	*CTP insurance*	*Workers' compensation insurance*
Australian Government	–	Monopoly insurer for Australian Government employees
New South Wales	Multiple private insurers	Monopoly insurer
Victoria	Monopoly insurer	Monopoly insurer
Queensland	Multiple private insurers	Monopoly insurer
Western Australia	Monopoly insurer	Multiple private insurers
South Australia	Monopoly insurer	Monopoly insurer
Tasmania	Monopoly insurer	Multiple private insurers
ACT	Provision for multiple private insurers (one in practice)	Multiple private insurers
Northern Territory	Monopoly insurer	Multiple private insurers

In the 2003 NCP assessment, the Council discussed the arguments for and against the monopoly provision of compulsory insurance but was unable to complete its assessment because the Productivity Commission was reviewing models for a national framework for the provision of workers compensation insurance. On the matter of public monopoly versus private competitive provision of workers compensation insurance, the Productivity Commission's final report (released in June 2004) indicated a preference for private provision of compulsory insurance because private capital is at risk, market competition may encourage efficiency and innovation, and government influence over premiums may be more transparent. However, it noted that competing private insurers can fail, resulting in pressures on governments to become funders of last resort. It concluded that '[t]he literature does not provide a powerful case for either public monopoly or competitive private provision of workers' compensation insurance' (PC 2004b, p. 323).

In light of the inconclusive nature of the Productivity Commission's findings and the arguments made on both sides of the debate, one option for the Council was to assess outcomes in those jurisdictions in which statutory monopoly provision of insurance has been reviewed. However, in many cases, the NCP reviews recommended introducing competition to the market, only to be followed up by second reviews recommending the opposite. Governments which did not undertake the second review could thus be found to not comply with their CPA obligations.

Given the current understanding of the comparative effects of competitive and monopoly provision, the Council considers that it is not in a position to weigh up the costs and benefits to the community of each form of provision. Further, it would not be appropriate for the Council to override the various, albeit conflicting, reviews. The Council is thus unable to assess whether it is necessary to have monopoly provision to achieve governments' objectives in CTP and workers compensation insurance, despite experience (reflected in table 9.3) throwing doubt on the view that statutory monopoly arrangements are necessary to further the public interest.

For this reason, the Council has not assessed governments that have retained statutory monopoly provision, which is the principal arrangement with NCP implications. However, it maintains the position in earlier NCP assessments that jurisdictions that allow competitive provision of compulsory insurance are complying with their CPA clause 5 obligations, because there is no restriction on competition.

National reviews

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. Although a national process can improve regulatory consistency across jurisdictions, progress has been unacceptable in many cases. Chapter 19 provides information on specific national reviews. In many cases, governments have not yet implemented the recommended reforms because delays have arisen from protracted intergovernmental consultation: some national reviews have taken several years to be completed. Areas in which governments' review and reform of legislation are incomplete because interjurisdictional processes need to be resolved include: agricultural and veterinary chemicals; drugs, poisons and controlled substances; and trade measurement. In the case of trade measurement, governments (except Western Australia) agreed to progress to a uniform legislative scheme in 1990.

National reviews and state and territory based reviews have both advantages and disadvantages. Outcomes appear to depend on two main considerations: first, who conducts the national review and, second, the relative costs and benefits of national consistency versus policy competition.

The robustness of a national review process is critically important. National reviews that are not independent of the executive arm of governments potentially encourage the least reform effort by setting compromise reform targets that all jurisdictions can reach. This has been the experience of some of the national reviews conducted by Ministerial councils. National reviews, should, therefore, be conducted by agencies with a record for robust and independent processes (such as the Productivity Commission's review of architects). This condition is particularly important given that a review report sets the benchmark for determining any coordinated interjurisdictional response to the review's recommendations.

The potential benefits of national reviews are reduced duplication of effort and the scope for greater consistency. These benefits accord with the notion of Australia as a 'single market' in a global environment. Like mutual recognition, consistency in regulation can reduce businesses' compliance costs and consumer's search and transaction costs. The benefits can be stark when set against the possibility that two states could embark on reviews of the same area of regulation and arrive at quite different reforms: if one reform path is rejected by one review but considered compliant by another, the Council faces difficult questions about how to assess outcomes (see box 9.1).

Box 9.1: Competition and non-violent erotica

In the past 12 months the Council received a considerable volume of correspondence from several businesses involved in the production and sale of non-violent erotica. While the Council has no role in relation to the censorship objectives of governments, the matters raised relate to competition impacts in state and territory legislation. In one state, non-violent erotica is prohibited in book form whereas identical images can be sold in video form. The two forms are substitute products, yet producers of non-violent erotica in book form are disadvantaged. In another jurisdiction, the exact converse situation arises: sales of the moving image are banned and sales of the image in book form are permitted.

What should be a censorship matter is manifested as an arbitrary restriction on competition that distorts consumption patterns and production decisions for a legal product with a large market presence. Other such anomalies occur across Australia. None of this legislation is subject to scrutiny under the NCP and, although the Council does not consider this to be a high priority, a national approach could provide some consistency for this not insignificant sector of commerce.

On the other hand, policy competition can also provide benefits. A standardised national reform model carries a risk of large scale regulatory failure, whereas a competitive model facilitates policy learning.[7]

The Council has encountered areas in which innovative approaches in one jurisdiction have been adopted by other jurisdictions. Often reforms in some jurisdictions have provided the spur for other jurisdictions to move in areas that were seemingly (politically) intractable.

[7] Also, regional variations can mean that standardised regulations are inappropriate — for example, building codes for cyclone prone areas may be unnecessarily prescriptive for regions with more moderate climates.

Table 9.4: Progress with legislation review and reform — Australian Government

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Wheat Marketing Act 1989	Does not meet CPA obligations (2002)	Does not meet CPA obligations (2002)
Dairy Produce Act 1986 (export control)	Incomplete	Meets CPA obligations (2004)
Agricultural and Veterinary Chemicals Code Act 1994; Agricultural and Veterinary Chemicals (Administration) Act 1992	Incomplete — interjurisdictional process	Incomplete
Imported Food Control Act 1992	Incomplete	Meets CPA obligations (2004)
Quarantine Act 1908 (plant and animal)	Incomplete	Incomplete
Export Control Act 1982 (food)	Incomplete	Incomplete
Aboriginal Land Rights (Northern Territory) Act 1976	Incomplete	Incomplete
Regulations under the Export Control Act related to wood	Incomplete	Incomplete
Shipping Registration Act 1981	Incomplete	Incomplete
Navigation Act 1912	Incomplete	Incomplete
Motor Vehicle Standards Act 1989	Does not meet CPA obligations (2002)	Meets CPA obligations (2004)
Therapeutic Goods Act 1989 (drugs and poisons)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Health Insurance Act 1973 (part IIA) (pathology collection centre licensing)	Incomplete	Incomplete
National Health Act 1953 (part 6 & schedule 1)*; Health Insurance Act 1973* (part III) (restrictions on services covered by private health insurance)	Incomplete	Incomplete
Superannuation Act 1976; Superannuation Act 1990; Superannuation Guarantee (Administration) Act 1992	Incomplete	Meets CPA obligations (2004)
Superannuation Industry (Supervision) Act 1993; Superannuation (Self Managed Superannuation Funds) Taxation Act 1987; Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991; Superannuation (Resolution of Complaints) Act 1993; Occupational Superannuation Standards Regulations Applications Act 1992; Superannuation (Financial Assistance Funding) Levy Act 1993	Incomplete	Meets CPA obligations (2004)

(*continued*)

Table 9.4 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Safety, Rehabilitation and Compensation Act 1988	Incomplete — interjurisdictional process	Not assessed (2004)
Interactive Gambling Act 2001	Incomplete	Does not meet CPA obligations (2004)
Broadcasting Services Act 1992; Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992; Radio Licence Fees Act 1964; Television Licence Fee Act 1964	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Radiocommunications Act 1992 and related legislation	Incomplete	Incomplete
Australian Postal Corporation Act 1989	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Customs Act 1901 (part XVB); Customs Tariff (Anti-dumping) Act 1975	Incomplete	Does not meet CPA obligations (2004)
Customs Tariff Act 1995 – Automotive industry arrangements	Incomplete	Meets CPA obligations (2004)
Customs Tariff Act 1995 – Textiles clothing and footwear	Incomplete	Incomplete

Table 9.5: Progress with legislation review and reform — New South Wales

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Grain Marketing Act 1991	Does not meet CPA obligations (2002)	Does not meet CPA obligations (2002). The Council accepts that it is not feasible for the state to comply before September 2005.
Poultry Meat Industry Act 1986	Does not meet CPA obligations (2002)	Incomplete
Agricultural and Veterinary Chemicals (New South Wales) Act 1994	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Marketing of Primary Products Act 1983 (Rice Marketing Board)	Incomplete (outside state's control)	Incomplete
Fisheries Management Act 1994	Incomplete	Meets CPA obligations (2004)
Stock Medicines Act 1989	Incomplete	Incomplete
Food Act 1989	Incomplete	Meets CPA obligations (2004)
Farm Debt Mediation Act 1994	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Mines Inspection Act 1901	Incomplete	Meets CPA obligations (2004)
Veterinary Surgeons Act 1986	Incomplete	Does not meet CPA obligations (2004)
Passenger Transport Act 1990 (taxis)	Does not meet CPA obligations (2003)	Incomplete
Tow Truck Industry Act 1998	Incomplete	Incomplete
Marine Safety Act 1998	Incomplete	Meets CPA obligations (2004)
Dentists Act 1989	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Dental Technicians Registration Act 1975		Does not meet CPA obligations (2004)
Nurses Act 1991	Incomplete	Meets CPA obligations (2004)
Optical Dispensers Act 1963; Optometrists Act 1930	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Podiatrists Act 1989	Incomplete	Meets CPA obligations (2004)
Pharmacy Act 1964	Incomplete	Does not meet CPA obligations (2004)
Legal Professions Act 1987	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process

(*continued*)

Table 9.5 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Wool, Hide and Skin Dealers Act 1935	Incomplete	Meets CPA obligations (2004)
Travel Agents Act 1986	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Shops and Industries Act 1962 (hairdressers)	Incomplete	Meets CPA obligations (2004)
Commercial Agents and Private Inquiry Agents Act 1963	Incomplete	Meets CPA obligations (2004)
Workers Compensation Act 1987	Incomplete — interjurisdictional process	Not assessed (2004)
Registered Clubs Act 1976 (liquor) *Liquor Act 1982* (liquor)	Incomplete	Meets CPA obligations (2004)
Funeral Funds Act 1979	Incomplete	Meets CPA obligations (2004)
Trade Measurement Act 1989; Trade Measurement Administration Act 1989	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Children (Care and protection) Act 1987; Children and Young Persons (Care and Protection) Act 1998	Incomplete	Meets CPA obligations (2004)
NSW Lotteries Corporatisation Act 1996; Public Lotteries Act 1996	Incomplete	Meets CPA obligations (2004)
Casino Control Act 1992	Incomplete	Meets CPA obligations (2004)
Gaming Machines Act 2001 (exclusive licence)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Racing Administration Act 1998	Does not meet CPA obligations (2002)	Meets CPA obligations (2004)
Environmental Planning and Assessment Act 1979 and planning and land use reform projects	Incomplete	Incomplete
Architects Act 1921	Incomplete	Meets CPA obligations (2004)

Table 9.6: Progress with legislation review and reform — Victoria

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agriculture and Veterinary Chemicals (Victoria) Act 1994	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agriculture and Veterinary Chemicals (Control of Use) Act 1992	Incomplete — interjurisdictional process	Meets CPA obligations (2004)
Fisheries Act 1995	Incomplete	Incomplete
Extractive Industries Development Act 1995	Incomplete	Meets CPA obligations (2004)
Transport Act 1983 (provisions relating to tow trucks) and Transport (Tow Truck) Regulations	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Port Services Act 1995	Incomplete	Meets CPA obligations (2004)
Drugs, Poisons and Controlled Substances Act 1981	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Pharmacists Act 1974	Incomplete	Incomplete
Legal Practice Act 1996	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process (general) Incomplete (conveyancing restrictions)
Private Agents Act 1966	Incomplete	Meets CPA obligations (2004)
Travel Agents Act 1986	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Accident Compensation Act 1985; Accident Compensation (Workcover Insurance) Act 1993	Incomplete — interjurisdictional process	Not assessed (2004)
Transport Accident Act 1986	Incomplete — interjurisdictional process	Not assessed (2004)
Trade Measurement Act 1995; Trade Measurement (Administration) Act 1995	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Tattersall Consultation Act 1958; Public Lotteries Act 2000	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Building Act 1993 (building approvals and building practitioners)	Incomplete	Meets CPA obligations (2004)
Architects Act 1991	Incomplete	Meets CPA obligations (2004)
Surveyors Act 1978	Incomplete	Meets CPA obligations (2004)

Table 9.7: Progress with legislation review and reform — Queensland

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agricultural and Veterinary Chemicals (Queensland) Act 1994	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agricultural Chemicals Distribution Control Act 1966	Incomplete	Meets CPA obligations (2004)
Fisheries Act 1994	Incomplete	Incomplete
Sawmills Licensing Act 1936	Incomplete	Meets CPA obligations (2004)
Transport Operations (Passenger Transport) Act 1994 (taxis)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Transport Infrastructure (Rail) Regulation 1996 — *Transport Infrastructure Act 1994*	Incomplete	Meets CPA obligations (2004)
Transport Infrastructure (Ports) Regulation 1994 — *Transport Infrastructure Act 1994* (activities outside ports)	Does not meet CPA obligations (2002)	Meets CPA obligations (2004)
Health practitioner legislation (practice restrictions): *Chiropractors and Osteopaths Act 1979; Dental Act 1971; Dental Technicians and Dental Prosthetists Act 1991; Medical Act 1939; Optometrists Act 1974; Optometrists Registration Act 2001; Physiotherapists Act 1964; Physiotherapists Registration Act 2001; Podiatrists Act 1969; Podiatrists Registration Act 2001*	Incomplete	Meets CPA obligations (2004)
Nursing Act 1992	Incomplete	Incomplete
Occupational Therapists Act 1979	Does not meet CPA obligations (2002)	Does not meet CPA obligations (2002)
Speech Pathologists Act 1979	Does not meet CPA obligations (2002)	Does not meet CPA obligations (2002)
Pharmacy Act 1976; Pharmacy Registration Act 2001	Incomplete	Incomplete
Health Act 1937 (drugs and poisons)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Legal Practitioners Act 1995; Queensland Law Society Act 1952	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process (general) Does not meet CPA obligations (2004) (conveyancing restrictions)
Health Act 1937 (hairdressing)	Incomplete	Meets CPA obligations (2004)
Pawnbrokers Act 1984; Second-hand Dealers and Collectors Act 1984	Incomplete	Meets CPA obligations (2004)

(*continued*)

Table 9.7 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Travel Agents Act 1988	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Auctioneers and Agents Act 1971 (maximum commissions for auctioneers and real estate agents); *Property Agents and Motor Dealers Act 2000*	Incomplete	Incomplete
Trade Measurement Act 1990	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Workcover Queensland Act 1996	Incomplete — interjurisdictional process	Not assessed (2004)
Superannuation (State Public Sector) Act 1990	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Liquor Act 1992	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Funeral Benefit Business Act 1982	Incomplete	Meets CPA obligations (2004)
Credit Act 1987	Incomplete	Meets CPA obligations (2004)
Keno Act 1996; Charitable and Non-profit Gambling Act 1999	Incomplete	Meets CPA obligations (2004)
Gaming Machine Act 1991	Incomplete	Does not meet CPA obligations (2004)
Wagering Act 1998 (TAB)	Incomplete	Meets CPA obligations (2004)
Interactive Gambling (Player Protection) Act 1998	Incomplete — interjurisdictional process	Meets CPA obligations (2004)
Grammar Schools Act 1975	Incomplete	Meets CPA obligations (2004)
Child Care Act 1991; Child Care (Child Care Centres) Regulation 1991 and Child Care (Family Day Care) Regulation 1991	Incomplete	Meets CPA obligations (2004)
Surveyors Act 1977	Incomplete	Meets CPA obligations (2004)

Table 9.8: Progress with legislation review and reform — Western Australia

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agricultural and Veterinary Chemicals (Western Australia) Act 1995	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agricultural Produce (Chemical Residues) Act 1983; Aerial Spraying Control Act 1966;Veterinary Preparations and Animal Feeding Stuffs Act 1976	Incomplete — interjurisdictional process	Incomplete
Grain Marketing Act 1975	Incomplete	Incomplete
Marketing of Eggs Act 1945	Incomplete	Meets CPA obligations (2004)
Chicken Meat Industry Act 1977	Incomplete	Meets CPA obligations (2004)
Marketing of Potatoes Act 1946	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Health Act 1911 and Food Regulations under the Health Act	Incomplete	Incomplete
Veterinary Surgeons Act 1960	Incomplete	Incomplete
Fish Resources Management Act 1994	Does not meet CPA obligations (2003)	Incomplete
Pearling Act 1990	Incomplete	Does not meet CPA obligations (2004)
Sandalwood Act 1929	Incomplete	Meets CPA obligations (2004)
Taxi Act 1994	Incomplete	Meets CPA obligations (2004)
Explosives and Dangerous Goods Act 1961	Incomplete	Meets CPA obligations (2004)
Jetties Act 1926 and Regulations; *Lights (Navigation) Protection Act 1938; Marine and Harbours Act 1981* and Regulations*; Shipping and Pilotage Act 1967* and Regulations*; Western Australian Marine Act 1982*	Incomplete	Incomplete
Transport Co-ordination Act 1966	Incomplete	Incomplete
Health practitioner legislation*:* *Dental Act 1939; Dental Prosthetists Act 1985; Chiropractors Act 1964; Optical Dispensers Act 1966; Optometrists Act 1940; Nurses Act 1992; Osteopaths Act 1997; Physiotherapists Act 1950; Podiatrists Registration Act 1984; Psychologists Registration Act 1976; Occupational Therapists Registration Act 1980*	Incomplete	Incomplete

(*continued*)

Table 9.8 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Medical Act 1894	Incomplete	Incomplete
Poisons Act 1964; Health Act 1911 (part VIIA) *(*drugs and poisons)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Pharmacy Act 1964	Incomplete	Incomplete
Legal Practitioners Act 1893	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Motor Vehicle Driving Instructors Act 1963	Incomplete	Meets CPA obligation (2004)
Auction Sales Act 1973	Incomplete	Incomplete
Travel Agents Act 1985 and Regulations	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Settlement Agents Act 1981	Incomplete	Incomplete
Pawnbrokers and Second-hand Dealers Act 1994	Incomplete	Incomplete
Debt Collectors Licensing Act 1964	Incomplete	Incomplete
Employment Agents Act 1976	Incomplete	Incomplete
Hairdressers Registration Act 1946	Incomplete	Does not meet CPA obligations (2004)
Real Estate and Business Agents Act 1978	Incomplete	Incomplete
Motor Vehicle (Third Party Insurance) Act 1943	Incomplete — interjurisdictional process	Not assessed (2004)
State Superannuation Act 2000	Incomplete	Meets CPA obligations (2004)
Workers Compensation and Rehabilitation Act 1981	Incomplete — interjurisdictional process	Meets CPA obligations (2004)
Retail Trading Hours Act 1987	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Liquor Licensing Act 1988	Does not meet CPA obligations (2003))	Does not meet CPA obligations (2003)
Petroleum Products Pricing Amendment Act 2000; Petroleum Legislation Amendment Act 2001	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Environmental Protection (Diesel and Petrol) Regulations 1999	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Retirement Villages Act 1992	Incomplete	Incomplete
Credit (Administration) Act 1984	Incomplete	Incomplete
Hire Purchase Act 1959	Incomplete	Meets CPA obligations (2004)

(*continued*)

Table 9.8 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Weights and Measures Act 1915	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Education Service Providers (Full Fee Overseas Students) Registration Act 1992	Incomplete	Meets CPA obligations (2004)
Curtin University of Technology Act 1966; Edith Cowan University Act 1984; Murdoch University Act 1973; University of Notre Dame Australia Act 1989; University of Western Australia Act 1911	Incomplete	Meets CPA obligations (2004)
Community Services Act 1972 and the Community Services (Child Care) Regulations 1988	Incomplete	Meets CPA obligations (2004)
Lotteries Commission Act 1990	Incomplete	Meets CPA obligations (2004)
Gaming Commission Act 1987 (exclusive licences)	Incomplete	Does not meet CPA obligations (2004)
Betting Control Act 1954; *Totalisator Agency Board Betting Act 1960*; *Racing Restrictions Act 1917*; *Racing Restrictions Act 1927*	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Western Australian Greyhound Racing Association Act 1981	Incomplete	Meets CPA obligations (2004)
Casino (Burswood Island) Agreement Act 1985; Casino Control Act 1984	Incomplete	Meets CPA obligations (2004)
Gaming Commission Act 1987 (minor gambling)	Incomplete	Incomplete
Town Planning and Development Act 1928; Western Australian Planning Commission Act 1985; Metropolitan Region Town Planning Scheme Act 1959	Incomplete	Incomplete
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	Incomplete	Incomplete
Architects Act 1921	Incomplete	Incomplete
Licensed Surveyors Act 1909	Incomplete	Meets CPA obligations (2004)
Valuation of Land Act 1987	Incomplete	Meets CPA obligations (2004)
Painters Registration Act 1961	Incomplete	Meets CPA obligations (2004)
Gas Standards Act 1972 and Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999	Incomplete	Meets CPA obligations (2004)
Electricity Act 1945 and Electricity (Licensing) Regulations 1991	Incomplete	Meets CPA obligations (2004)

Table 9.9: Progress with legislation review and reform — South Australia

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agricultural and Veterinary Chemicals (South Australia) Act 1994	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agricultural Chemicals Act 1955; Stock Foods Act 1941; Stock Medicines Act 1939	Incomplete	Meets CPA obligations (2004)
Chicken Meat Industry Act 2003	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Barley Marketing Act 1993	Incomplete	Incomplete
Dairy Industry Act 1992; Meat Hygiene Act 1994	Incomplete	Meets CPA obligations (2004)
Veterinary Surgeons Act 1985	Incomplete	Meets CPA obligations (2004)
Mining Act 1971; Mines and Works Inspection Act 1920	Incomplete	Meets CPA obligations (2004)
Opal Mining Act 1995	Incomplete	Incomplete
Fisheries Act 1982	Incomplete	Does not meet CPA obligations (2004)
Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987	Incomplete	Meets CPA obligations (2004)
Passenger Transport Act 1994 (taxis)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Motor Vehicles Act 1959 (tow trucks)	Incomplete	Incomplete
Dangerous Substances Act 1979	Incomplete	Meets CPA obligations (2004)
Harbours and Navigation Act 1993	Incomplete — interjurisdictional process	Meets CPA obligations (2004)
Dentists Act 1984	Does not meet CPA obligations (2003)	Incomplete
Occupational Therapists Act 1974	Incomplete	Incomplete
Chiropractors Act 1991	Incomplete	Incomplete
Medical Practitioners Act 1983	Incomplete	Incomplete
Optometrists Act 1920	Incomplete	Incomplete
Physiotherapists Act 1991	Incomplete	Incomplete
Pharmacy Act 1991	Incomplete	Incomplete
Psychological Practices Act 1973	Incomplete	Incomplete
Chiropodists Act 1950	Incomplete	Incomplete

(*continued*)

Table 9.9 continued

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Controlled Substances Act 1984	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Legal Practitioners Act 1981	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Conveyancers Act 1994	Incomplete	Meets CPA obligations (2004)
Hairdressers Act 1988	Meets CPA obligations (2001) — contingent on re-review	Meets CPA obligations (2004)
Employment Agents Registration Act 1993	Incomplete	Incomplete
Travel Agents Act 1986	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Motor Vehicles Act 1959	Incomplete — interjurisdictional process	Not assessed (2004)
Workers Rehabilitation and Compensation Act 1986	Incomplete — interjurisdictional process	Not assessed (2004)
Southern State Superannuation Act 1987	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Liquor Licensing Act 1997	Incomplete	Incomplete
Shop Trading Hours Act 1977	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Petrol Products Regulation Act 1995	Incomplete	Incomplete
Trade Measurement Act 1993; Trade Measurement Administration Act 1993	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Children's Protection Act 1993	Incomplete	Meets CPA obligations (2004)
State Lotteries Act 1966 (exclusive licence)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Gaming Machines Act 1992	Incomplete	Incomplete
Authorised Betting Operations Act 2000 (racing and betting)	Incomplete	Meets CPA obligations (2004)
Lottery and Gaming Act 1936	Incomplete	Meets CPA obligations (2004)
Architects Act 1939	Incomplete	Incomplete
Survey Act 1992	Incomplete	Meets CPA obligations (2004)
Land Valuers Act 1994	Incomplete	Meets CPA obligations (2004)
Building Work Contractors Act 1995	Incomplete — interjurisdictional process	Meets CPA obligations (2004)

Table 9.10: Progress with legislation review and reform — Tasmania

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agricultural and Veterinary Chemicals (Tasmania) Act 1994	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Incomplete	Meets CPA obligations (2004)
Food Act 1998	Incomplete	Meets CPA obligations (2004)
Veterinary Surgeons Act 1987	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Marine Farming Planning Act 1995	Does not meet CPA obligations (2003)	Meets CPA obligations (2004)
Taxi and Luxury Hire Car Industries Act 1995	Incomplete	Meets CPA obligations (2004)
Medical Practitioners Registration Act 1996	Incomplete	Meets CPA obligations (2004)
Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*)	Incomplete	Incomplete
Optometrists Registration Act 1994	Incomplete	Meets CPA obligations (2004)
Poisons Act 1971; Alcohol and Drug Dependency Act 1968; Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*); *Criminal Code Act 1924* (drugs and poisons)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Legal Profession Act 1993	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Auctioneers and Real Estate Agents Act 1991	Incomplete	Incomplete
Travel Agents Act 1987	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Motor Accidents (Liabilities and Compensation) Act 1973	Incomplete — interjurisdictional process	Not assessed (2004)
Vocational Education and Training Act 1994	Incomplete	Meets CPA obligations (2004)
Racing Act 1983; Racing and Gaming Act 1952 (except as it relates to minor gaming), which was replaced by the *Racing Regulation Act 1952*	Incomplete	Incomplete
Racing and Gaming Act 1952 (relating to minor gaming); Gaming Control Act 1993 (gaming machines)	Incomplete	Does not meet CPA obligations (2004)
Architects Act 1929	Incomplete	Meets CPA obligations (2004)
Plumbers and Gas-fitters Registration Act 1951	Incomplete	Incomplete

Table 9.11: Progress with legislation review and reform — the ACT

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Veterinary Surgeons Registration Act 1965	Incomplete	Incomplete
Dangerous Goods Act 1975	Incomplete	Meets CPA obligations (2004)
Motor Traffic Act 1936 (taxis); *Road Transport (General) Act 1999; Road Transport (Public Passenger Services) Act 2001*	Incomplete	Does not meet CPA obligations (2004)
Health practitioner legislation: *Dentists Act 1931; Chiropractors and Osteopaths Act 1983; Medical Practitioners Act 1930; Nurses Act 1988; Optometrists Act 1956; Physiotherapists Act 1977; Psychologists Act 1994; Podiatrists Act 1994*	Incomplete	Meets CPA obligations (2004)
Health practitioner legislation: *Dental Technicians and Dental Prosthetists Registration Act 1988*	Incomplete	Does not meet CPA obligations (2004)
Pharmacy Act 1931	Incomplete	Incomplete
Drugs of Dependence Act 1989; Poisons Act 1933; Poisons and Drugs Act 1978 (drugs and poisons)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Legal Practitioners Act 1970	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agents Act 1968 (travel agents)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Agents Act 1968 (employment agents licensing)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Trade Measurement Act 1991	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Public Sector Management Act 1994 (superannuation)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Education Act 1937; Schools Authority Act 1976; Public Instruction Act 1880 (NSW); Free Education Act 1906 (NSW)	Incomplete	Meets CPA obligations (2004)
Betting (ACTTAB Limited) Act 1964; Betting (Corporatisation) (Consequential Provisions) Act 1996	Incomplete — pending national task force on cross-border betting	Incomplete
Gaming Machine Act 1987	Incomplete	Does not meet CPA obligations (2004)
Interactive Gambling Act 1998	Incomplete — interjurisdictional process	Incomplete
Architects Act 1959	Incomplete	Meets CPA obligations (2004)
Building Act 1972; Electricity Act 1971 (electrician licensing); *Electricity Safety Act 1971; Plumbers, Drainers and Gasfitters Board Act 1982*	Incomplete	Meets CPA obligations (2004)

Table 9.12: Progress with legislation review and reform — the Northern Territory

Title of legislation	*2003 NCP assessment*	*2004 NCP assessment*
Agricultural and Veterinary Chemicals (Northern Territory) Act	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Poisons and Dangerous Drugs Act (agvet chemicals)	Incomplete	Meets CPA obligations (2004)
Food Act 1986	Incomplete	Meets CPA obligations (2004)
Veterinarians Act 1994	Incomplete	Meets CPA obligations (2004)
Fisheries Act 1996	Incomplete	Incomplete
Mining Act 1980	Incomplete	Meets CPA obligations (2004)
Commercial Passenger (Road) Transport Act (taxis)	Does not meet CPA obligations (2003)	Incomplete
Health practitioner legislation: *Dental Act; Medical Act; Nursing Act; Optometrists Act*	Incomplete	Meets CPA obligations (2004)
Health Practitioners and Allied Professionals Registration Act	Incomplete	Meets CPA obligations (2004) — apart from title reservation for occupational therapists
Radiographers Act	Incomplete	Meets CPA obligations (2004)
Pharmacy Act	Incomplete	Incomplete
Poisons and Dangerous Drugs Act; Therapeutic Goods and Cosmetics Act (drugs and poisons), *Pharmacy Act*	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Legal Practitioners Act	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Consumer Affairs and Fair Trading Act (travel agents)	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Territory Insurance Office Act; Motor Accidents (Compensation) Act	Incomplete — interjurisdictional process	Not assessed (2004)
Liquor Act	Incomplete	Does not meet CPA obligations (2004)
Trade Measurement Act	Incomplete — interjurisdictional process	Incomplete — interjurisdictional process
Education Act (higher education)	Incomplete	Meets CPA obligations (2004)
Community Welfare Act	Incomplete	Incomplete
Gaming Control Act and Regulations; *Gaming Machine Act* and Regulations	Incomplete	Meets CPA obligations (2004)
Totalisator Licensing and Regulation Act; Sale of NT TAB Act	Incomplete	Does not meet CPA obligations (2004)

(*continued*)

Table 9.12 continued

Racing and Betting Act and Regulations; *Unlawful Betting Act* and Regulations	Incomplete	Meets CPA obligations (2004)
Architects Act	Incomplete	Meets CPA obligations (2004)

Table 9.13: Key to legislation topic areas in the jurisdictional chapters 10–18

A	**Primary industries**
A1	Agricultural commodities
A2	Farm debt finance
A3	Fisheries
A4	Forestry
A5	Agricultural and veterinary chemicals
A6	Food
A7	Quarantine and food exports
A8	Veterinary services
A9	Mining
B	**Transport**
B1	Taxis and hire cars
B2	Tow trucks
B3	Dangerous goods
B4	Rail
B5	Vehicle standards
B6	Ports and sea freight
B7	Air transport
C	**Health and pharmaceutical services**
C1	Health professions Chiropractors Dental practitioners Medical practitioners Nurses Optometrists and optical paraprofessionals Osteopaths Pharmacists Physiotherapists Podiatrists Psychologists Occupational therapists Radiographers Speech pathologists
C2	Drugs, poisons and controlled substances
C3	Restrictions on pathology services under Medicare Regulation of private health insurance – product controls
D	**Legal services**
E	**Other professions** Commercial agents, inquiry agents and security providers Driving instructors Motor vehicle and second-hand dealers Real estate agents Travel agents Auctioneers Conveyancers Employment agents Hairdressers Other licensed occupations
F	**Insurance and superannuation**
F1	Compulsory third party motor vehicle Workers' compensation
F2	Superannuation
G	**Retail trading**
G1	Shop trading hours
G2	Liquor licensing
G3	Petrol retailing
H	**Fair trading and consumer protection**
H1	Other fair trading legislation
H2	Consumer credit legislation
H3	Trade measurement legislation
I	**Social regulation**
I1	Education Universities
I2	Child care
I3	Gambling TABs Casinos Racing and betting Lotteries Gaming machines Internet gambling Minor gambling
J	**Planning, construction and development**
J1	Planning and approval
J2	Building regulations and approval
J3	Building professions Architects Surveyors Valuers Electrical workers Plumbers, drainers and gasfitters Builders or building practitioners Other building trades
K	**Communications**
	Broadcasting Radiocommunications Postal services
L	**Barrier assistance**
	PMV TCF Anti-dumping

10 Australian Government

A1 Agricultural commodities

Dairy Produce Act 1986

When the Competition Principles Agreement (CPA) came into being, the Dairy Produce Act:

- levied producers of drinking milk and provided for paying the proceeds to producers of milk for manufacturing — an arrangement known as the Domestic Market Support (DMS) scheme
- licensed dairy exports to markets with access restrictions, most importantly cheese, skim milk powder and butter to Japan, and cheese to the European Union and United States
- via a tariff quota system, restricted some cheese imports into Australia.

On 30 June 2001 the DMS scheme ended. In July 2002 the licensing of cheese exports to Japan ended. In July 2003 the Australian Dairy Corporation and the Dairy Research and Development Corporation became Dairy Australia, a company limited by guarantee constituted under the *Corporations Act 2001*, and export control functions of the former corporation were transferred to the Australian Government Department of Agriculture, Fisheries and Forestry. In the 2003 NCP assessment, the National Competition Council found that the Australian Government had not met its CPA obligations arising from the Dairy Produce Act because it had not reviewed remaining restrictions.

In January 2004 the Australian Government made new regulations that extended restrictions on the export of cheese to the European Union and United States under those countries' respective concessional tariff-quota arrangements for imports of Australian cheese. The regulations provide for the annual allocation of access among Australian cheese exporters according to access rights that are transferable and divisible. Forfeited access rights are available to new entrants or may be reallocated to existing holders.

The only remaining restrictions on competition, therefore, are necessary to meet the requirements of access to the EU and US cheese markets, and such access is allocated among Australian exporters in a manner that restricts competition to the least extent possible.

The Council thus assesses that the Australian Government has met its CPA clause 5 obligations arising from the Dairy Produce Act.

Wheat Marketing Act 1989

When the CPA came into being, the Wheat Marketing Act prohibited the export of wheat by anyone other than the Australian Wheat Board without the board's consent. In addition, the Act guaranteed the board's borrowings until July 1999 and provided for the accumulation of the Wheat Industry Fund to eventually replace the statutory guarantee.

In 1997 and 1998, the Australian Government amended the Act to facilitate the establishment of a grower-owned and -controlled company, AWB Limited, and its export pool subsidiary, AWB International Limited (AWBI), to assume responsibility for wheat marketing and financing from July 1999. The amendments also:

- established the Wheat Export Authority (WEA) to control the export of wheat and to report to the Minister before the end of 2004 on the performance and conduct of the AWBI
- conferred on AWBI the power to export wheat without the WEA's consent
- exempted anything done by the AWBI in exporting wheat from part IV of the *Trade Practices Act 1974*.

The power of the WEA to control the export of wheat is constrained. The amended Act requires the WEA to consult the AWBI before consenting to the export of wheat; for proposed exports in bulk, the WEA cannot consent without the AWBI's approval.

In early 2000 the Australian Government commissioned a three-member committee to review the Act against CPA clauses 4 and 5 and other policy principles. The committee received around 3000 submissions and conducted consultations throughout the country and overseas. It released a draft report for comment in mid-October 2000, and the Australian Minister for Agriculture released the final report on 22 December 2000.

In relation to the CPA clause 5, the committee argued that introducing more competition was more likely than continuing the export controls to deliver greater net benefits to growers and the wider community (Irving *et al*. 2000). It found that:

- any price premiums earned by virtue of the single desk are likely to be small (estimated at around US$1 per tonne in the period 1997–99)
- the single desk is inhibiting innovation in marketing
- the single desk is impeding cost savings in the grain supply chain.

Estimates of the economic impact of the single desk arrangements ranged from a loss of $233 million per year to a gain of $71 million.

The committee felt, however, that it would be premature to repeal the Act without a further relatively short evaluation period. The committee was concerned that the estimation of benefits and costs is complex, and that some uncertainty remained. It also believed 'that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable net benefits than was evident during this review' (Irving *et al*. 2000, p. 7). The committee recommended, therefore, that:

- the government retain the single desk until the 2004 review required by the Act
- the 2004 review incorporate NCP principles and be the final opportunity to show a net community benefit from the arrangements
- the government convene a joint industry–government forum to develop performance indicators for the 2004 review.

The committee also recommended that the WEA trial (for the three years until the 2004 review) a simplified export control system whereby it licenses exporters annually. It considered that the freight rate differential between bulk exports and exports in containers and bags provides a high degree of protection for bulk exports by the AWBI to all markets except Japan, and that opening up the export of wheat in containers and bags would allow highly desirable innovation in the discovery, development and expansion of markets for wheat exports.

In relation to the CPA clause 4 structural reform obligation, the committee found that the Act does not clearly separate the regulatory and commercial functions of the former Australian Wheat Board. It recommended amending the Act to:

- ensure the WEA is totally independent
- allow the WEA, for the three years until the 2004 review, to consent to the export of:
  - wheat in bags and containers without consulting the AWBI
  - durum wheat without obtaining the AWBI's written approval.

The Australian Government responded on 4 April 2001, stating that it would retain the single desk but would not conduct the 2004 review under NCP principles. The Minister argued that the latter decision is necessary to avoid further uncertainty in the industry and for wheat growers.

The government also declined to amend the Act to ensure the independence of the WEA, particularly in relation to the export consent arrangements. It argued that removing the AWBI's role in these arrangements would significantly change the balance between the operations of the WEA and the AWBI, which might have affected the AWB's then proposed listing on the Australian Stock Exchange.

The government agreed to the development of rigorous and transparent performance indicators to ensure the 2004 review accurately measures the benefits to industry and the community. A working group — comprising the WEA, the AWBI, the Department of Agriculture, Fisheries and Forestry, and the Grains Council of Australia — was formed to develop the performance measurement framework, accounting for the views of the other industry representatives. The authority released the framework on 4 September 2001; it has since reported annually on its monitoring results to the Minister for Agriculture, Fisheries and Forestry and the Grains Council of Australia, and released a summary report to the public.

The Australian Government also agreed to improve the export consent system based on the licensing arrangements proposed in the review. The working group prepared the proposed changes, which the WEA announced on 28 September 2001. The changes included clearer consent criteria, a quarterly application cycle, a 12-month consent for shipments to niche markets and a three-month consent for other shipments.

In June 2002 the Council assessed that the Australian Government had not met its CPA clause 4 and 5 obligations arising from the Wheat Marketing Act, because the review did not show that retaining the wheat export single desk is in the public interest. Rather, the review found that allowing competition is more likely to be of net benefit to the community. The Council also found that the export consent arrangements administered by the WEA were substantially more restrictive than recommended by the review, and noted that the Office of Regulation Review reported in November 2001 that the regulation impact statement prepared for the revised export consent guidelines was inadequate (PC 2001).

In June 2003, following an inquiry by the Senate Rural and Regional Affairs and Transport Legislation Committee, the Parliament passed amendments to the Act that provided for:

- funding the WEA until June 2006 from a levy on the export of wheat
- clarifying that the role of the WEA in administering export consents is to complement the objective of the AWBI in maximising net pool returns, while facilitating the development of niche and other markets for the benefit of growers and the wider community
- clarifying the ability of the WEA to vary the terms of export consents
- establishing an independent panel to conduct the 2004 statutory review with assistance from the WEA.

In 2003 the Council assessed that the Australian Government had yet to meet its CPA clause 4 and 5 obligations arising from the Act.

On 24 December 2003 the Minister for Agriculture, Fisheries and Forestry initiated the 2004 Wheat Marketing Review as required under the Act. The review was conducted by an independent panel led by Ms Alice Williams. Its

focus was to assess the AWBI's performance as the commercial manager of the wheat export single desk and its obligations to maximise returns to growers and to examine the performance of the WEA. The review terms of reference stated:

> *Analysis of whether or not the single desk should continue is not within the scope of the review and the review is not intended to fulfil National Competition Policy requirements.* (Truss 2004)

The review delivered two reports — one for the Minister, containing commercially confidential information, and another summarising the panel's conclusions and recommendations. The latter, released on 15 October 2004, found that the current export consent system is not performing as effectively as it could and is unlikely to result in the best outcomes for the industry. It observed that returns to growers are unlikely to be maximised in this situation and that exporters other than AWBI need more confidence, certainty, timeliness and incentive to focus on market development.

In relation to bulk wheat exports the panel did not examine options for removing the veto power of AWBI, arguing that this is intrinsic to the single desk system, but did recommend that the AWBI and WEA ensure greater transparency and accountability in the exercise and monitoring of this power.

In relation to bagged and containerised wheat exports, the panel examined but did not support either the complete removal of the export control function or introducing a licensing scheme. It found that these changes could impact greatly on the pool and that significant legislative change would be required. Instead it recommended that the WEA adopt a longer-term consent system for bagged and containerised exports, involving:

- a streamlined application process — turning applications around within four days
- more consultation between the WEA and AWBI
- clearer rules, for example, clearer definitions of 'niche' products, more information on markets available to other exporters
- better prioritised monitoring of compliance with consent terms
- variable and lower consent fees.

The Minister for Agriculture, Fisheries and Forestry has said that the government will develop its response to the recommendations by late 2004, and has invited comments by 12 November 2004.

The Council looks forward to the Australian Government moving to increase the scope for effective competition in wheat export marketing via the export consent system. Such changes, while potentially significant, will not however be sufficient for the government to meet its CPA clause 4 and 5 obligations arising from the Wheat Marketing Act.

A4 Forestry

Export Control Act 1982 (relating to wood)

The Australian Government controls the export of wood and woodchips via Regulations under the Export Control Act: the Export Control (Unprocessed Wood) Regulations, the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Regional Forests Agreements) Regulations. The regulations prohibit the export of:

- hardwood woodchip from public and private native forests unless:
  - from a region covered by a Regional Forest Agreement (RFA), or
  - the exporter holds a restricted shipment licence granted by the Minister on a shipment-by-shipment basis for woodchip from other regions
- other unprocessed wood from public or private native forests unless from a region covered by an RFA
- other unprocessed wood from plantations, whether hardwood or softwood, on private or public land, unless:
  - from a state or territory with a code of forest practice for plantation management that the Minister accepts satisfactorily protects environmental and heritage values, or
  - the exporter is the holder of a licence to export that wood granted by the Minister.

RFAs are agreements between the Australian and respective state governments to protect environmental and other values by maintaining a comprehensive, adequate and representative national forest reserve system and to give forest industries a firm base for investment. There are 10 RFAs in four states: Western Australia, Victoria, Tasmania and New South Wales.

In July 2001 the Australian Government completed the review of various regulations under the Export Control Act affecting wood. The review, principally by officials of the Department of Agriculture, Fisheries and Forestry (Australia), was unable to find any significant benefit from the regulations in encouraging either domestic processing or sustainable management of forests. It recommended (Standing Committee on Forests 1996) that the government:

- remove export controls on sandalwood
- remove export controls over plantation sourced wood if reviews of plantation codes of practice for Queensland and the Northern Territory find these codes meet National Plantation Principles

- either remove export controls over native forest sourced hardwood woodchip, or allow such exports from non-RFA regions under licence.

The government has agreed to remove controls on the export of sandalwood and is consulting with Western Australia on this matter. (Discussions are yet to take place with Queensland, the other state that exports sandalwood.) The government has agreed to remove export controls on plantation timber from the Northern Territory, and is finalising administrative procedures for this to occur. The removal of controls on the export of Queensland sourced plantation timber is subject to discussions later this year with the Queensland Government on a code of practice for plantation timber. Once such export controls are removed, the Australian Government intends to consider removing controls on the export of hardwood woodchip from non-RFA regions.

The Australian Government has not met its CPA clause 5 obligations arising from export controls on wood because reform of the controls is not yet complete.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Administration) Act 1992
Agricultural and Veterinary Chemicals Code Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary chemicals, which covers the evaluation, registration, handling and control of these chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The federal Acts establishing these arrangements are the Agricultural and Veterinary Chemicals (Administration) Act and the Agricultural and Veterinary Chemicals Code Act. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

Reform of the federal Acts remains outstanding. Consequently, the delay has meant that reform of state and territory legislation that adopts the national code has not been completed. The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its reforms.

A6 Food

Imported Food Control Act 1992

The Imported Food Control Act and its associated Regulations enable the Australian Quarantine and Inspection Service to monitor and inspect

imported foods. The Australian Government reviewed the Act in 1998. The review concluded that the existing regulatory arrangements deliver a net benefit to the community and therefore should be retained. It also found, however, that the efficiency and effectiveness of the arrangements could be improved, such as by encouraging importers to take co-regulatory responsibility for food safety. The Government announced in June 2000 that it accepted all of the review recommendations. At the time of the 2003 NCP assessment, it had implemented eight of the 23 recommendations. The outstanding recommendations involve legislative change and major changes to information technology systems.

The necessary amendments to the Act were passed by Parliament in 2004. The Council assesses that the Australian Government has met its CPA obligations in this area.

A7 Quarantine and food exports

Quarantine Act 1908

The Australian Government administers Australia's quarantine arrangements under the Quarantine Act. In the 2003 NCP assessment, the Council found that the government met its CPA obligations relating to the human quarantine provisions of the Act.

The animal and plant health provisions of the Act have not been subject to NCP review, but the Australian Quarantine Inspection Service proposes to commence a comprehensive examination of these provisions following the resolution of a World Trade Organisation challenge. Any amendments arising from this review will be subject to analysis via a regulation impact statement.

Because the Australian Government has not completed its review and reform of the animal and plant health provisions of the Quarantine Act, the Council assesses that it has not met its CPA obligations in this area.

Export Control Act 1982 (relating to food)

The Export Control Act provides for the inspection and control of food and forest exports. (Section A4 of this chapter discusses review and reform activity relating to restrictions on competition in the export of forest products). The Act controls most food exports — fish, dairy produce, eggs, meat, fresh and dried fruits and vegetables. It restricts competition by requiring premises to be registered and to meet certain construction standards, and by imposing processing standards with attendant compliance costs and regulatory charges. These restrictions raise Australian food exporters' costs and may lead to forgone export sales, particularly where the requirements differ from those for domestic sales.

The Australian Government completed a two-year review of the Act, as it relates to food, in February 2000. The government decided in April 2002 to accept all review recommendations, and it is consulting with industry on timeframes for implementing the reforms. While considerable progress has been made, several complex issues in relation to both food and forest exports are yet to be resolved.

Because the Australian Government has still to implement the review recommendations, the Council assesses that it has not met its CPA obligations in this area.

A9 Mining

Aboriginal Land Rights (Northern Territory) Act 1976

In 1998 the Australian Government commissioned an independent review of the *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations. This legislation gives traditional Aboriginal owners the right to consent to mineral exploration. The review (released in August 1999) recommended retaining this right and removing other restrictions on consent negotiations. The government released an options paper on possible reforms in 2002; in response, the Northern Territory Government and the Northern Territory Land Council released a joint submission in September 2003 proposing reforms to the Act. The Australian Government is considering the final form of an Act to implement reforms.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed reform activity.

B5 Vehicle standards

Motor Vehicles Standards Act 1989

The Motor Vehicles Standards Act sets uniform standards to apply to road vehicles, with an emphasis on safety, emissions, anti-theft and energy savings. Following a 1999 review, the Australian Government changed the Act to limit imports of used vehicles (under the low volume scheme) to 'specialist' and 'enthusiast' vehicles, introduced a registered automotive workshops scheme, and required that imported used vehicles up to 15 years old be inspected and approved to ensure compliance with the appropriate national standards.

The review provided a public benefit argument for requiring vehicles to be inspected by registered workshops, but not for introducing the specialist and enthusiast vehicle scheme. The Council notes, however, that the Productivity

Commission's subsequent 2002 review of post-2005 assistance to the automotive industry recommended retaining restrictions on the importation of used vehicles while the vehicle manufacturing sector made the transition to a lower assistance environment. The Productivity Commission considered that unconstrained imports of second-hand vehicles would jeopardise the achievement of a viable domestic automotive production sector capable of operating in the long term without special treatment. The Council considers that the Productivity Commission's review accounts for the overall public interest and concludes that the Australian Government is therefore not in breach of its CPA obligations with respect to this legislation. The Council notes, however, that aspects of the regulatory arrangements for imports of second-hand vehicles are currently under review. The Council expects any changes to arrangements to be subject to the government's gatekeeping arrangements.

B6 Ports and sea freight

Navigation Act 1912

The Australian Government reviewed several laws relating to ports and shipping. Following a review of part VI of the Navigation Act in 1997, the government streamlined the processes for engaging in coastal trade but has not yet addressed its CPA obligations under those aspects of Part VI related to cabotage.

The 2000 review of all other parts of the Act recommended that Australia continue to base its regulation on internationally agreed standards, except where no international standard exists or where the Australian community expects standards to exceed international measures. The Australian Government advised that new shipping legislation cannot be developed until several substantial matters are resolved in consultation with the industry, the states and the Northern Territory to ensure adequate regulatory coverage and workable solutions. The government has had initial consultations with industry on proposed amendments to the Navigation Act, and it is preparing a draft Bill.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its review and reform of the Navigation Act.

Shipping Registration Act 1981

The Australian Government's 1997 review of the Shipping Registration Act (which provides for an Australian system of registering ships and mortgages on ships) recommended that Australia continue to legislate conditions for granting nationality to its ships in accordance with international conventions. The review made recommendations to improve the workings of this

legislation and to reduce compliance costs. The government approved Act amendments in 1998 to implement the review recommendations, but the amendments did not proceed. It reported to the Council that it is considering the review recommendations in the context of its review of broader shipping policy issues. The government has consulted initially with industry on proposed amendments to the Act, and it is preparing a draft Bill.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its review and reform of the Shipping Registration Act.

C2 Drugs, poisons and controlled substances

Therapeutic Goods Act 1989

The terms of reference for the Galbally national review did not explicitly cover Australian Government legislation such as the Therapeutic Goods Act. The Council, therefore, acknowledges the Australian Government's view that the Galbally recommendations to modify federal legislation to improve legislative outcomes for state and territory governments represent best practice rather than a formal CPA obligation.

However, the Council considers that efficient outcomes are best served by all participating governments meeting the recommendations of the national review. Moreover, the terms of reference required the review to:

- have regard to '[n]ational uniformity of regulation and the administration of that regulation'
- address '[i]nterfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.'

When coupled with specific Galbally recommendations relating to Australian Government legislation, and the Therapeutic Goods Act in particular, the Council has considered it appropriate to examine Australian Government progress in implementation of Galbally reforms as for other jurisdictions.

Following the review's outcome (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. The Council of Australian Governments (CoAG) is considering the proposed response out of session.

In conjunction with implementing the Galbally review recommendations, the Australian Government has agreed to establish a joint agency (the Trans Tasman Therapeutic Products Agency) with New Zealand for the regulation of therapeutic goods. The establishment of the joint agency is separate to the Galbally review process. The new arrangements are expected to commence from 2005. Rather than reforming therapeutic goods legislation that is likely

to be repealed in 2005, the government considers that it will implement legislative change as part of the new trans-Tasman legislation.

The Council accepts that the Australian Government is considering the Galbally review recommendations through CoAG and in the context of new trans-Tasman legislation. However, the Council re-affirms its 2003 NCP assessment that the Australian Government has not yet implemented the requisite reforms.

C3 Restrictions on pathology services

Health Insurance Act 1973 (Part IIA)

Part IIA of the Health Insurance Act specifies that Medicare benefits are payable for pathology services if:

- the pathology service is requested by a registered medical or dental practitioner, and a clinical need is identified for the service
- the specimen is collected at an approved collection centre
- the services are provided by an approved pathology practitioner in an accredited pathology laboratory owned by an approved pathology authority.

A review of Part IIA of the Act recommended, among other things, that further reviews be undertaken to:

- review the current qualification requirements and the approval process for approved pathology practitioners
- examine the merits of extending requesting rights for pathology services to nurses and/or health workers in remote communities
- revise the accreditation requirements for pathology laboratories to place greater emphasis on quality assurance and public disclosure.

The review committee also found that the approved collection centre scheme may not be appropriate or sustainable in the longer term. However, given that the scheme had only recently been put in place, the committee recommended deferring further changes in this area until any benefits from the new arrangements had time to be realised.

In the 2003 NCP assessment, the Council accepted the public interest case for deferring further reforms to the approved collection centre scheme because the current scheme is being phased in over four years to December 2005. It considered that if the Australian Government were to accept the review recommendations and announce a review in 2005 of the regulations affecting

the approved collection centre scheme, then the government would comply with its CPA obligations.

In the context of this assessment, the Australian Government has advised that it has accepted key review recommendations and is progressing implementation. It has also advised that it intends to conduct and complete a review of regulations affecting the approved collection centre scheme later in 2005-06. This review will follow the completion in December 2005 of the phasing-in arrangements of the approved collection centre scheme. The *Pathology Quality and Outlays Memorandum of Understanding 2004/05-2008/09* (Pathology MoU) between the Australian Government and the pathology industry was signed in September 2004. Contained in the MoU is an agreement by both parties to undertake a review of the approved collection centre arrangements to ensure that these arrangements remain consistent with the objectives of competition policy and the review will be completed in 2005–06. The MoU is a public document and the Australian Government has advised that it will be available on the Department of Health and Ageing website in due course.

The Council notes that the government's acceptance of key review recommendations is consistent with its CPA requirements. However, it considers that the government should expedite implementation, given the lack of progress in progressing pathology reforms since the review's completion in December 2002. This implementation includes making legislative changes or commencing subsequent reviews of specific issues in line with review recommendations.

For the pending review of the approved collection scheme, the Council accepts that existing arrangements are still in a transitional phase and notes the government's decision to complete a review of the scheme in 2005-06. However, the Australian Government has not publicly announced a review with associated terms of reference. The Council notes that the Australian Government, to be assessed as compliant, must undertake a scheme review. The Council's compliance benchmark is a formal announcement of this review with appropriate terms of reference.

The Council thus assesses that the Australian Government has not yet met its CPA obligations in this area.

C4 Regulation of private health insurance — product controls

National Health Act 1953 (Part 6 and Schedule 1)
Health Insurance Act 1973 (Part 3)

Australian Government regulation prevents health funds from paying rebates for certain hospital services unless the services are provided by, or on behalf

of, medical practitioners, midwives or dental practitioners. This regulation restricts competition by preventing substitute health care providers (such as podiatrists) from negotiating with private health insurance funds to attract a rebate for their services. The Council raised this matter with the Australian Government in December 2000.

For the 2002 and 2003 NCP assessments, the Council was advised that the Australian Government Department of Health and Ageing was establishing trials to assess the suitability of including 'podiatric surgery' within the definition of 'professional attention' under the Health Insurance Act. This inclusion would allow podiatrists to negotiate with health funds to attract rebates for in-hospital podiatric surgery.

In the 2002 NCP assessment, the Council noted that as the trial process was incomplete, it would finalise its assessment of compliance with the CPA clause 5 guiding principle in 2003. Given that approval was sought in 2003 to commence the trials, the Council assessed the government's reforms in this area as incomplete for the 2003 assessment.

For this 2004 NCP assessment, the Australian Government has advised that product restriction regulations remain under consideration but that attempts to establish the podiatric trials have ceased. Instead, the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act* has been passed by Parliament and received royal assent on 13 July 2004. This Act removes any legislative impediment to health funds paying benefits, from their hospital tables, for accommodation and nursing care associated with in-hospital podiatric surgery by Australian Government accredited podiatrists. However, it does not extend to enabling funds to pay for the accredited podiatric surgeon's or associated anaesthetist's fees.

The Council considers that the proposed amendments represent only a partial response to product restriction controls. The amendments do not extend to cover the professional services of podiatric surgeons. Also, the legislation does not extend to other health professions not currently covered by the definition of professional attention. However, the Department of Health and Ageing has advised that representations from industry would be considered on an individual basis in line with the department's responsibilities for ensuring that any changes do not have a detrimental impact on the broader health system, including Medicare.

Given this, the Council considers that the Australian Government has not yet met its CPA obligations in this area.

F1 Workers' compensation insurance

Safety, Rehabilitation and Compensation Act 1988

Australian Government employees are covered by the monopoly compensation insurer, Comcare. The review of this arrangement was completed in 1997 and recommended introducing competition to Comcare. The government has not responded to the review, so no reforms have been introduced.

For reasons outlined in chapter 9, the Council has not assessed the Australian Government's compliance with its CPA obligations in this area for the 2004 NCP assessment.

F2 Superannuation

Superannuation Act 1976
Superannuation Act 1990
Superannuation Guarantee (Administration) Act 1992

Based on a review of Australian Government superannuation legislation in 1997, the government introduced amending legislation in 2001 to allow certain Australian Government employees to choose their superannuation fund. This legislation was defeated in the Senate. The government also introduced choice-of-fund legislation for the wider community in 1997 and 1998. This legislation too was defeated in the Senate in 2001.

A Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002 was introduced in June 2002. This Bill was passed by the House of Representatives on 5 December 2003 and by the Senate on 22 June 2004, and takes effect from 1 July 2005.

The Council assesses that the review and reform of this area of legislation complies with CPA obligations.

Superannuation Industry (Supervision) Act 1993
Superannuation (Self Managed Superannuation Funds) Taxation Act 1987
Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991
Superannuation (Resolution of Complaints) Act 1993
Occupational Superannuation Standards Regulations Applications Act 1992
Superannuation (Financial Assistance Funding) Levy Act 1993

In February 2001 the Australian Government requested that the Productivity Commission review a range of superannuation Acts, including the Superannuation Industry (Supervision) Act and the Superannuation (Self Managed Superannuation Funds) Taxation Act. The Productivity Commission was required to focus on those parts of the legislation that restrict competition. It finalised its report in December 2001 and made more than 20 recommendations about the prudential supervision and regulation of the superannuation industry. Importantly, the review found that most parts of the legislation that restrict competition are warranted to confine the execution of certain tasks to qualified professionals. The recommendations generally centred on simplifying the legislation to reduce compliance costs.

The Australian Government released its interim response to the review on 17 April 2002, agreeing to certain recommendations and delaying its final decisions on other recommendations until the report of the Superannuation Working Group (chaired by Mr Don Mercer) was finalised. After the Mercer report was completed, the government issued its final response to the Productivity Commission report on 20 June 2003, reporting that the government had commenced implementation of some of the inquiry recommendations. Exposure draft legislation was circulated to the superannuation industry, covering the licensing of all trustees of superannuation funds and the requirement for trustees to submit a risk management plan to the Australian Prudential Regulation Authority (APRA).

The government undertook action broadly consistent with the recommendations, including reviews of specific matters. It introduced the Superannuation Safety Amendment Bill 2003 to implement recommendations that all superannuation fund trustees be licensed and required to submit a risk management plan to APRA. Passed by Parliament on 10 March 2004, the Bill received royal assent on 27 April 2004.

The Council assesses that the Australian Government has met its CPA obligations to reform the superannuation legislation subject to review.

I3 Internet gambling

Interactive Gambling Act 2001

The Interactive Gambling Act makes it illegal to provide certain interactive gambling services, such as online poker machines and casinos. Other gambling services, such as interactive wagering and sports betting, are exempted from the Act and regulated by the states and territories. The Act was not included in the Australian Government legislation review schedule, but is subject to CPA clause 5(5) requirements for new legislation.

In the 2001 NCP assessment, the Council found that the government had not provided a net public benefit argument for the legislation. While the government stated that its objective is to minimise opportunities for problem gamblers to exacerbate their problems through ready access to online gambling, it did not address whether banning some forms of domestically sourced Internet gambling is the only way of achieving this objective.

The Australian Government has now reviewed the Act to consider the social and commercial impact of interactive gambling services, and the effectiveness of the Act in dealing with these effects. This work was not an NCP review with a primary focus on assessing the legislation against the CPA. The final review report (issued in July 2004) found that the benefits of interactive gambling services to consumers, government, industry and the economy are, on balance, likely to outweigh the costs (particularly those costs associated with problem gambling). The review examined methods of restricting access to Internet gambling and found that those relying on Internet filtering technologies would be costly and only partly effective. It also found that there would be small benefits from using the payments system to block illegal gambling transactions, but it did not account for implementation and administration costs, or for the effects on the efficiency of payments systems.

The legislation provides for competition in the permitted forms of interactive gambling, depending on the regulatory regimes established by the states and territories. The review did not assess the costs and benefits of the ban on certain forms of gambling; rather, it investigated how the ban should be implemented.

Given that the review did not address the principal restrictions on competition, the Council assesses that the Australian Government has not complied with its CPA clause 5(5) obligations. The Council accepts, however, that it may be difficult to meet the government's social policy objectives in other ways.

K Communications

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

The Broadcasting Services Act and related Acts embody ad hoc regulation that the Australian Government has established over time. It entails several restrictions on competition:

- The number of commercial free-to-air television broadcasters is restricted to three in any geographic area until at least the end of 2006, and the scope for new radio stations is also restricted.

- The commercial free-to-air television broadcasters are prohibited from multichannelling.[1] The multichannelling restrictions are intended to protect pay television operators from direct competition, but these operators are not allowed (under 'antisiphoning' rules) to broadcast major sporting events that free-to-air broadcasters wish to show. The antisiphoning rules, in turn, deliver a substantial market advantage to the existing broadcasters.

- Television broadcasters are required to simulcast both standard and high definition digital services, whereas standard definition has been considered satisfactory in other countries. Broadcasters are also required to simulcast both analogue and digital signals, which leaves little spectrum for new digital services. Because analogue television is much less efficient than digital television in its use of spectrum, the existing broadcasters account for most of the spectrum.

- Through program restrictions, the legislation restricts the ability of datacasters[2] to compete with broadcasters.

In its 2000 review of broadcasting, the Productivity Commission described the regulatory arrangements as a legacy of inward looking, anticompetitive and restrictive 'quid pro quos'. It argued that the government should close down analogue services as soon as possible, end the requirement for high definition digital broadcasting, relax the restrictions on datacasting and multichannelling, end the artificial distinction between datacasting and digital broadcasting and relax the antisiphoning rules (PC 2000).

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1 Multichannelling is the transmission of more than one stream of programming over a television channel.

2 A datacasting service delivers content as text, data, speech, music or other sounds and visual images.

The Productivity Commission also recommended that the government separate spectrum access rights from broadcasting licences and convert broadcasting licence fees to spectrum access fees. It further contended that the Australian Communications Authority should sell access to spectrum through a competitive bidding process, and that all broadcasting licence holders should pay fees based on their use of spectrum rather than on their revenue. These proposals would free up spectrum and make it possible for broadcasters to enter the industry. In this context, the Productivity Commission recommended removing the restrictions that prevent new broadcasters from entering the market before the end of 2006.

The Australian Government has made only limited responses to the inquiry report. The Australian Department of Communications, Information Technology and the Arts conducted a datacasting review during 2002 and, in releasing the December 2002 review report, stated that it 'there should be no change at this time to the rules relating to the content which can be provided under a datacasting licence' (DCITA 2002, p. 7). The government has since authorised limited datacasting 'trials'.

In May 2004 the Australian Government announced that it would conduct several reviews required under the Broadcasting Services Act. The first four reviews (outlined below) are to be completed by 1 January 2005.

1. Examine whether free-to-air broadcasters should be allowed to provide additional programming (including multichannelling) and offer other types of service (including pay television channels), and also consider whether the requirement for simulcasting analogue and digital signals should be amended or repealed.

2. Examine matters relating to the potential end (31 December 2006) of the moratorium on the issue of new commercial free-to-air television broadcasting licences.

3. Examine the efficient allocation of spectrum for digital television.

4. Report on whether provisions of the Broadcasting Services Act relating to underserved geographic areas should be amended or repealed.

The government further announced that it will conduct a review of high definition digital television requirements by mid-2005 and a review of the duration of the digital simulcast period by early 2006. Its recent announcements are the first significant policy developments that respond to the Productivity Commission review.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it is yet to address the major restrictions on competition.

Radiocommunications Act 1992 and related legislation

The Radiocommunications Act is the primary legislation governing the use of the radiofrequency spectrum which is required for broadcasting and telecommunications services, and for community safety services. There are competing demands for radiofrequency spectrum (a limited resource) and the Australian Communications Authority conducts auctions for those parts of the spectrum that are particularly valuable to users. The authority also ensures sufficient spectrum is available for noncommercial organisations that fulfil a public good role, such as the defence forces and community services.

The Productivity Commission conducted an NCP review of the Radiocommunications Act and related Acts in 2001-02. The government released the final review report on 5 December 2002. The Productivity Commission (PC 2002b, pp. xxxi–xxxii) highlighted the need for the scarce spectrum resource to be used efficiently and in ways that do not restrict competition. To this end, it made several recommendations to enhance the role of the market in spectrum management. The government accepted most of these recommendations, but rejected six, of which the most significant related to the repeal of elements of the Radiocommunications Act that allow the Minister to impose limits on parts of the spectrum that a person may use. The government rejected this recommendation on the basis that the Act's provisions are 'strongly pro-competitive' and work in harmony with s50 of the Trade Practices Act.

Of the 35 recommendations that have been accepted, nine require legislative action to amend the Act. Work to draft the legislative changes started in early 2004. The government is considering the regulatory and budgetary implications of recommendations that relate to spectrum licensing.

The Council thus assesses that the Australian Government has not yet met its CPA obligations in this area because review and reform are incomplete.

Australian Postal Corporation Act 1989

Australia Post has a statutory monopoly in the provision of key 'reserved' services under the Australian Postal Corporation Act. These reserved services are:

- the collection and delivery of letters within Australia — the reserved service applies to letters up to 250 grams and for a fee that is up to four times the rate of postage for a standard postal article carried by ordinary post
- the delivery of incoming international mail.

The Australian Government sought to address the competition implications of the Act, including reserved services and the delivery of the universal service obligation (USO) whereby Australia Post is required to make the standard letter service available at a single uniform rate of postage for all Australians.

Australia Post funds the USO internally at an annual cost of around $90 million.

In 1997 the Australian Government requested that the Council review the Act. The Council's report was completed in February 1998, recommending that:

- Australia Post continue to provide the Australia-wide letter service, with unprofitable parts of this USO funded directly from the Budget
- household letters remain reserved to Australia Post, with a mandated uniform rate of postage
- open competition be introduced to the delivery of business letters
- all international mail services be open to competition
- the government regulate to ensure access on reasonable terms to Australia Post's community service obligation (CSO) and post office box services (NCC 1998b).

In July 1998 the Australian Government announced that it would reduce the scope of Australia Post's monopoly position. The Postal Services Legislation Amendment Bill 2000 was introduced to Parliament in April 2000 with the following principal features:

- Incoming international mail would no longer be a reserved service, and the protection afforded to Australia Post's domestic mail service would be reduced from 250 grams to 50 grams and from four times the standard postage rate to one times.
- A postal services access regime would be established under the Trade Practices Act.

The government withdrew the Bill in March 2001, however, in the face of opposition in the Senate. Then, on 14 November 2002 it announced a package of postal reforms that would partly address the recommendations of the 1998 NCP review. The subsequent *Postal Services Legislation Amendment Act 2004* was passed on 12 May 2004. The legislation provides for:

- expanded powers for the Australian Competition and Consumer Commission to inquire into disputes about the terms and conditions relating to bulk mail interconnection arrangements
- expanded powers for the Australian Communications Authority to cost Australia Post's CSOs and report on its quality of service and compliance with service standards
- the introduction of accounting transparency for Australia Post (by giving the Australian Competition and Consumer Commission the power to determine record-keeping rules for Australia Post) to assure competitors

that Australia Post is not unfairly competing by cross-subsidising its competitive services with revenue from reserved services

- the 'legitimisation' of 'document exchanges' (businesses that provide mail collection and delivery services for businesses) and 'aggregators' (businesses that sort the mail of smaller companies so it qualifies for Australia Post's bulk mail discounts).

The reforms in the Postal Services Legislation Amendment Act will have some pro-competitive impact. The Australian Communications Authority's monitoring of Australia Post's CSOs and service quality, however, does not compare with the enhanced quality of service that would be likely if Australia Post were subject to competition in the delivery of standard mail and incoming international mail. Nevertheless, accounting separation will be helpful to competitive neutrality outcomes, and the legitimisation of document exchanges will remove the risk of legal challenge to these entities although it will not represent an increase in competition to Australia Post.

The government is yet to address the major restrictions in the Australian Postal Corporation Act that relate to the monopoly that the Act accords Australia Post in the delivery of domestic business and incoming international mail.

The Council assesses that the Australian Government has not met its CPA obligations in this area because the reforms fall short of addressing the competition restrictions identified in the NCP review.

L Barrier assistance

Customs Tariff Act 1995 — automotive industry arrangements

The passenger motor vehicle industry operates under the Australian Government's post-2000 assistance arrangements, which run until 2005. Under these arrangements, a range of import tariffs apply, and financial assistance is delivered to automotive vehicle and component producers under the Automotive Competitiveness and Investment Scheme (ACIS).

In March 2002 the Australian Government referred the post-2005 assistance arrangements for the automotive manufacturing sector to the Productivity Commission for inquiry. The commission provided its final report in August 2002, proposing a series of tariff reform options. The inquiry established that the remaining restrictions — the temporary retention of higher tariff rates and transitional assistance for the automotive industry over the short to medium term — are in the public interest.

The government announced in December 2002 that it accepted the Productivity Commission's preferred option for tariff reform and chose an approach consistent with the commission's reform proposals for ACIS (rather

than one of the specific proposals). These recommendations were embodied in the *Customs Tariff Amendment (ACIS) Act 2003* and the *ACIS Administration Amendment Act 2003*, which were passed in October 2003.

The Council assesses that the Australian Government has met its CPA obligations in this area.

Customs Tariff Act 1995 — textiles, clothing and footwear

The key current assistance arrangements for the textile, clothing and footwear (TCF) industries comprise:

- the Textiles, Clothing and Footwear (Strategic Investment Program) Scheme (SIP), which provides grants for eligible investment in new and second-hand plant and equipment, research and development, production and ancillary activities related to restructuring

- a commitment to hold tariffs for TCF products at 2001 levels until 2005. From January 2005 the tariff will be phased down at differential rates depending on the nature of the product.

In November 2002 the Australian Government asked the Productivity Commission to provide policy options for post-2005 assistance for the TCF industry. The Commission provided its final report in July 2003. It noted that assistance reductions after 2005 would reinforce the competitive pressures on companies to improve their productivity, quality and delivery performance, to innovate, and to look for new markets.

While the Productivity Commission proposed a series of tariff reform options, its preferred approach was to maintain TCF tariffs at 2005 rates until 2010, and then reduce them to 5 per cent and maintain that rate until 2015. The exception was for apparel and certain finished textiles, for which the tariff would reduce to 10 per cent in 2010 and then to 5 per cent in 2015. The Productivity Commission considered that gradual tariff reduction would allow structural adjustment within the industry, with supported transitional assistance to buttress the tariff changes.

The government announced its response in November 2003. It accepted the recommendations relating to tariff reductions and included a $747 million package to assist the adjustment. This position is embodied in the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 and the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004, which were introduced into Parliament in June 2004.

The Council accepts that using the existing SIP arrangements to facilitate the transition to a lower tariff environment is consistent with promoting the long term public interest. It considers that the Productivity Commission's review indicates that the restrictions — the temporary retention of higher tariff rates

and transitional assistance for the TCF sector over the short to medium term — can be in the public interest.

Nonetheless, the Council assesses that the Australian Government has not yet met its CPA obligations in this area because it has not passed the relevant legislation.

Customs Tariff Act 1901 (Part XVB) and *Customs Tariff (Anti-dumping) Act 1975*

Following a review in 1996 (the Willett Review), the Australian Government amended the legislation on antidumping and countervailing measures in 1998. Key changes were the abolition of the Anti-Dumping Authority and streamlining of the antidumping and countervailing investigations to a single stage conducted by the Australian Customs Service.

The Australian Government committed to examining the impact and effectiveness of the new system as part of its review of antidumping and countervailing regulation under the CPA — a review that was scheduled to commence in 1997-98. The government postponed the review to allow full implementation of the new administrative arrangements.

Despite the new administrative arrangements having operated for seven years, the government has not made progress towards completing its review and reform of the competition restrictions contained in the Customs Act (Part XVB), and the Customs Tariff (Anti-dumping) Act.

In its 2003 NCP assessment, the Council assessed the Australian Government as not having yet met its CPA obligations in this area because review and reform were incomplete. Given the lack of progress since that time, the Council now assesses that the Australian Government has failed to meet its CPA obligations.

11 New South Wales

A1 Agricultural commodities

Grain Marketing Act 1991

The Grain Marketing Act vested ownership of all barley, sorghum, oats, canola, safflower, sunflower, linseed and soybeans grown in New South Wales in the New South Wales Grains Board. A group of State Government representatives and four industry representatives completed a review of the Act in July 1999. A majority of the review group recommended removing by August 2001 all restrictions on competition in marketing grains except those on export sales of barley, which were to be reviewed again by August 2004.

Following the collapse of the Grains Board in September 2000, which left growers preparing for harvest without a buyer, the government announced: the sale to Grainco Australia Limited of a five-year exclusive licence to act as agent for the Grains Board; the immediate removal of all restrictions on the marketing of sunflower, safflower, linseed and soybeans, and of domestic marketing restrictions for feed barley, canola and sorghum; and the sunsetting of all remaining restrictions (that is, on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola) in September 2005. The *Grain Marketing Amendment Act 2001* formalised these reforms.

In June 2003 the government reported to the National Competition Council that it could not bring forward the expiry of the remaining restrictions because they are the subject of a court-ordered Scheme of Arrangement and binding Deeds of Agreement between Grainco Australia, the Administrator of the Grains Board and the New South Wales Government.

In October 2003 Grainco Australia Limited merged with GrainCorp Limited. The combined company, also known as GrainCorp Limited, announced that it would facilitate the transition to a deregulated environment by allowing other parties to export canola and sorghum under permit for a fee of $5 per tonne. It also indicated that it would review, in consultation with the Grains Board and other stakeholders, the arrangements for domestic malting barley and export feed and malting barley for the 2004-05 harvest.

The Council found in 2003 that the public interest evidence presented by New South Wales for retaining restrictions on grain marketing until 30 September 2005 was inadequate. For a full discussion of this evidence see NCC 2003a.

Following further discussions with officials the Council accepts that the government is not in a position to meet its CPA clause 5 obligations in this area by bringing forward the expiry of remaining restrictions on grain marketing from September 2005. The Council acknowledges the initiative by GrainCorp Limited to allow competitive exporting in canola and sorghum before full deregulation.

Poultry Meat Industry Act 1986

The Poultry Meat Industry Act prohibited the processing of poultry unless from a processor's own farm or supplied under an agreement approved by the Poultry Meat Industry Committee (a committee of grower, processor and independent members). The committee also determined the fee paid by processors to growers for the supply of chicken growing services.

In 1998 the New South Wales Government commissioned a group of grower, processor and government representatives to review the Act, but this group was unable to reach a conclusion. In 2001 the government commissioned consultants Hassall & Associates to undertake a net public benefit analysis. The government has not released this analysis, but reported a finding that the Act imposes a small net public cost equivalent to 1 per cent of the retail price of chicken meat.

In November 2001 the government announced that it would not remove the restrictions on competition because they are necessary to countervail the market power of processors. In late 2002, it amended the Act to authorise the anticompetitive conduct of the Poultry Meat Industry Committee under the *Trade Practices Act 1974*, and to allow additional pricing flexibility within limits approved by the committee.

In February 2004, following the Australian Government Treasurer's announcement of competition payments for 2003-04, the New South Wales Government introduced into Parliament the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 which would remove the powers of the Poultry Meat Industry Committee to approve agreements and to set fees or fee formulas. Subsequently the government commissioned an independent review of the Act (to be completed later this year) and withdrew the related amendments from the Bill.

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act. The government had retained significant restrictions on competition without demonstrating that those restrictions are in the public interest.

The Council endorses the decision of the government to commission a new independent NCP review of the Act, and will look for a robust outcome from this review and consequent reforms to the Act. When these steps are completed, New South Wales will have met its CPA clause 5 obligations related to the Act.

Marketing of Primary Products Act 1983 (rice marketing)

All rice grown in New South Wales is vested in the New South Wales Rice Marketing Board (NSWRMB) by Regulations and Proclamations made under the Marketing of Primary Products Act. No-one other than the NSWRMB and its agents may market New South Wales-grown rice either domestically or on export markets. The NSWRMB delegates its marketing functions to the grower-owned Ricegrowers Co-operative Limited (RCL) under an exclusive licensing arrangement. RCL also controls the storage and processing of rice.

The government completed an NCP review of its rice marketing arrangements in November 1995. A review group composed of government and industry representatives concluded that the benefits of the export arrangements significantly exceeded the costs borne by domestic consumers and the economy. It recommended removing the NSWRMB's monopoly over domestic marketing, but retaining the export monopoly, to reduce the domestic costs while retaining export related benefits. It proposed that the state repeal its Regulations and Proclamations and that an export monopoly be established under Australian Government jurisdiction.

In 1996 the New South Wales Government extended the existing regulatory arrangements until 5 January 2004, arguing that:

- export premiums significantly exceed domestic costs
- export licensing by the Australian Government is unnecessary because most rice is produced in New South Wales
- alternative state-based arrangements are unlikely to be feasible.

In its 1997 NCP assessment and 1998 supplementary NCP assessment, the Council found that New South Wales had not implemented the recommendations of its review and, therefore, had not met its CPA clause 5 obligations in relation to domestic rice marketing arrangements.

New South Wales subsequently agreed to examine options for retaining a single export desk under Australian Government jurisdiction while removing the domestic rice market monopoly. A working party of officials from the Australian and New South Wales governments, the Council and industry representatives was formed; in January 1999, it recommended that the Australian Government establish a rice export authority to manage the single desk. Under this model, RCL would hold an automatic export right for three to five years, and third parties could obtain rice export licences where this would not diminish the benefits of the single desk.

New South Wales indicated its in-principle acceptance of the model in April 1999 and, after further development and some delay, the Australian Government began consulting other state and territory governments on the model in March 2001.

In November 2003 the New South Wales Government introduced legislation into Parliament to extend the rice vesting arrangements until 31 January 2009. The Minister for Agriculture and Fisheries stated that the Australian Government's consultations on the proposal with other state and territory governments had been abandoned and that the New South Wales Government would review the rice vesting arrangements under NCP during the period of the extension. The amendments received assent on 5 December 2003.

On 8 December 2003, the Australian Government formally confirmed to New South Wales, following the consultations, that it would not establish a single Australian rice export desk. On 15 March 2004 the New South Wales Minister for Agriculture and Fisheries wrote to the Council to confirm that the State Government would begin a new NCP review of the rice marketing arrangements, to be completed in 2004 by an independent reviewer.

The review is being conducted by Integrated Marketing Communications which anticipates providing a final report to the government in early 2005.

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act, because the government had not removed the domestic rice marketing monopoly as recommended by the NCP review. The Council endorses the decision of the New South Wales Government to commission a new independent NCP review of the Act, and will look for a robust outcome from this review and consequent reforms to the Act. When these steps are completed, New South Wales will have met its CPA clause 5 obligations related to the Act.

A2 Farm debt finance

Farm Debt Mediation Act 1994

Under the Farm Debt Mediation Act, New South Wales regulates the resolution of disputes that may arise between a farmer and their creditor where a farmer defaults on a secured debt and the creditor proposes to enforce the mortgage securing the debt by, for example, taking possession of the mortgaged property. The Act prohibits lenders from enforcing farm mortgages in default without first offering defaulting farmers the option of mediation. Farmers have 21 days notice in which to accept mediation. The lender must not enforce the mortgage until the New South Wales Rural Assistance Authority is satisfied that:

- satisfactory mediation has taken place, or
- the farmer has declined to mediate, or
- three months have elapsed since the lender gave notice, and the lender has attempted to mediate in good faith.

These obligations on lenders restrict competition in the market for farm debt finance by raising the costs and risks of lending to farmers. These restrictions can be expected to flow through to farmers' borrowing costs. The Act also restricts competition by providing for the accreditation of mediators.

A group composed of officials and representatives of the farming and banking industries reviewed the Act, reporting in December 2000. The review group found that negotiating solutions to farm debt disputes through, say, mediation is often less costly for both parties and fairer than court proceedings, but that farmers often do not seek voluntary mediation because they have feelings of 'relative powerlessness'. It recommended that the State Government retain mandatory mediation of farm debt disputes and accreditation of mediators. It also recommended:

- prohibiting the lender from enforcing the mortgage for 12 months where the lender, participating in mediation, is found not to have acted in good faith

- making the Rural Assistance Authority decisions on mandatory farm debt mediation subject to review by the Administrative Decisions Tribunal.

The State Government accepted the recommendations in November 2001, and amendments to the Act were passed in October 2002.

In its 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations arising from the Farm Debt Mediation Act. The state's NCP review provided insufficient evidence to support its recommendations to impose a 12-month penalty on lenders found not to have participated in mediation in good faith, and to subject related decisions by the Rural Assistance Authority to Administrative Decisions Tribunal review. The Council also questioned the adequacy of the NCP review's case for prohibiting lenders from enforcing farm mortgages in default before offering mediation.

In May 2004, following consultations with the Council, the government introduced into Parliament the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, which would remove the 12-month penalty and administrative review provisions. Parliament passed the amendments on 24 June 2004.

Given the legislative amendments and accepting that the Act's requirement of mediation to farmers in default of the mortgage obligations does not restrict competition to a significant degree, the Council assesses that New South Wales has met its CPA obligations arising from its reform of the Farm Debt Mediation Act.

A3 Fisheries

Fisheries Management Act 1994

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations arising from the Fisheries Management Act because the State Government was yet to demonstrate the public interest in two restrictions on competition that the 2002 NCP review had identified for further evaluation: (1) fish receiver registration fees and (2) licensing for recreational charter fishing boats. Since the 2003 NCP assessment, the Government has subjected these two restrictions to an independent evaluation by the Centre for International Economics (CIE).

Fish receiver fees are paid by persons or businesses who buy fish from a commercial fisher, or by commercial fishers who sell their fish directly to the public. The Fish Receiver Program (FRP) aims to aid the conservation of fish stocks by minimising the marketing of illegally caught fish. It also ensures quality standards are met. It provides an auditable link between fish catches and the point of first sale. Fees for fish receiver licences are set on the basis of cost recovery, with about 75 per cent of costs currently recovered.

CIE found that the FRP is an integral part of the overall monitoring, surveillance and compliance system necessary to effectively manage the fish resources of New South Wales and to achieve the objectives of the Act. Similar programs operate in other jurisdictions where there are output quota restrictions or share management fisheries. By late 2004, all major commercial fisheries in New South Wales will be share management fisheries. CIE also found that the fee structure for the FRP is reasonable and justified.

There are two licence based restrictions on charter fishing: (1) a cap on the number of recreational charter fishing boats, and (2) limits on the transfer of licences by part-time fishing operators to full-time operators. The objective of these restrictions is to control fishing effort. CIE found that a limit on the number of boats is the most appropriate means of controlling overall fishing effort from the charter boat sector. Other restrictions, such as more restrictive bag limits or restraints on fishers, would be largely ineffective because ensuring compliance would be difficult. CIE found that the method of limiting boat numbers is consistent with many grandfathering methods employed in other fisheries and other industries.

The small number of non-transferable licences was introduced as a transitional measure to cater for part-time operators who would not otherwise qualify for a full transferable licence. If the non-transferable licences were to be made transferable, fishing effort would potentially increase on a permanent basis. CIE found that the sunsetting of non-transferable licences is a reasonable way of catering for those who have a history of part-time operations but who otherwise would not qualify for a full transferable licence.

The Council assesses that New South Wales has met its CPA clause 5 obligations arising from the Fisheries Management Act.

A5 Agricultural and veterinary chemicals

Agriculture and Veterinary Chemicals (New South Wales) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary chemicals, which covers the evaluation, registration, handling and control of these chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The Agriculture and Veterinary Chemicals (New South Wales) Act is the relevant legislation for New South Wales.

The Australian Government Acts were subject to a national review (see Chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed and the Council thus assesses that New South Wales has not met its CPA obligations in relation to this legislation.

Stock Medicines Act 1989

Beyond the point of sale, agricultural and veterinary chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and chemical uses other than those for which a product is registered (that is, off-label uses).

A national review examined control of use legislation for agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania. New South Wales (along with South Australia and the Northern Territory) conducted its own review of control of use legislation. The only significant outstanding matter for New South Wales concerns advertising restrictions in the Stock Medicines Act. New South Wales reported that it will repeal these restrictions but this is yet to occur. Amending legislation was introduced to Parliament on 14 September 2004 and passed the lower house two days later.

The Council assesses that New South Wales has not met its CPA obligations in relation to this legislation because it has not completed its reforms.

A6 Food

Food Act 1989

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. In November 2000, CoAG signed an Intergovernmental Food Regulation Agreement. Under the agreement, the states and territories undertook to make their food legislation consistent with the core provisions of the model food Act within 12 months. The core provisions relate mainly to food handling offences and to the adoption of the Food Standards Code. Adoption of the noncore provisions is voluntary. States and territories may also retain provisions in their legislation that are not in conflict with the enacted provisions of the model food Act. New South Wales passed new legislation (the *Food Act 2003*) in September 2003. The Act contains all core provisions of the model food Act that relate primarily to food handling offences and the application of the Food Standards Code in New South Wales.

The Council assesses New South Wales as having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1986

New South Wales licenses veterinary surgeons and regulates the practice of veterinary surgery in the Veterinary Surgeons Act. The review of the Act determined that the regulation of veterinary practice through a system of registration is in the public interest because it ensures that only trained persons can undertake surgical and other high risk health care procedures on animals and that consumers are well informed about the competencies required of animal health service providers.

The review recommended several reforms of the Act to maximise the net public benefits arising from the regulation of veterinary practice. In December 2003 Parliament passed the Veterinary Practice Bill 2003 to implement these reforms. Section 14 of the new Act responds to the recommendation to ease restrictions on vet practice ownership. The new Act deregulates ownership to the extent that any form of business arrangement may own a veterinary practice, so long as one or more veterinary surgeons hold the majority ownership. The rationale for retaining this restriction is that persons with a controlling interest are accountable under the Act. Section 14(5)(a) provides an exemption for agribusinesses by permitting them to provide veterinary clinical services but not veterinary hospital services.

Although the Bill was assented to on 5 December 2003, s14(5)(a) does not take effect for at least 12 months from this date. New South Wales has thus retained an ownership restriction and deferred making operative a section of the Act that would lessen the impact of this restriction. The Council notes that other jurisdictions have deregulated ownership and taken alternative approaches to ensure professional standards are maintained (such as making it an offence for a person to direct a veterinarian to practise in an unprofessional manner).

The Council thus assesses that New South Wales has not met its CPA obligations in this area.

A9 Mining

Mines Inspection Act 1901

The New South Wales Government released a position paper in October 2002 on the reform of legislation governing safety in metalliferous mines and quarries. Reforms proposed in the position paper accounted for competition issues raised in the 2001 NCP review of the Mines Inspection Act. The proposed reforms are similar to those for coal mines, aiming to ensure the particular hazards of metalliferous mine and quarry operation are appropriately managed at each site. In May 2004 the government introduced a draft Mine Health and Safety Bill (based on the position paper) to repeal and replace the Mines Inspection Act, and Parliament passed the Bill in September 2004.

The Council thus assesses that New South Wales has met its CPA obligations in relation to the Mines Inspection Act.

B1 Taxis and hire cars

Passenger Transport Act 1990 (taxis)

The Passenger Transport Act in New South Wales gives the Director-General of the Ministry of Transport the discretion to grant (or not grant) an application for a new taxi licence at the market value (currently around $220 000). In 2003, New South Wales reported that no new applications for perpetual licences had been received in recent years.

The Independent Pricing and Regulatory Tribunal (IPART) completed the NCP review of the Act in November 1999. The review report concluded that 'restricting the number of taxi and hire car licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industries other than the licence owners' (IPART 1999, 'Foreword'). It

also concluded that taxi and hire car restrictions are not in the public interest. It recommended immediately freeing licence restrictions in the hire car sector, annually increasing the number of taxi licences by 5 per cent between 2000 and 2005 (that is, approximately 300 new taxis per year), and conducting a further review in 2003.

The government did not respond to these recommendations, instead issuing 60 six-year taxi licences and 120 wheelchair-accessible taxi licences (a small increase on the almost 6000 taxis in New South Wales).

In the 2003 NCP assessment, the Council noted that New South Wales had not introduced taxi reforms as recommended by the IPART review in 1999 but that the government foreshadowed asking IPART in June 2003 to model options for taxi and hire car reform. New South Wales informed the Council in 2003 that perpetual taxi plates are issued at market value on application although no applications had been received in recent years.

The Council noted that the only remaining restriction in the hire car market is an annual fee of $8235. Although this fee had been reduced from the previous annual rate of $16 100, the Council considered that it still represents a significant deterrent to new hire car businesses.

The Council concluded in 2003 that New South Wales had not met its CPA obligations to review and reform taxi and hire car legislation.

Since the 2003 NCP assessment, the New South Wales Government has not implemented any substantive reforms. It is not surprising, therefore, that the Transport Services Minister requested the Taxi Advisory Council (which comprises representatives of the Taxi Council, the Country Taxi Association, the Transport Workers Union and the Ministry of Transport) to attend a meeting on 16 December 2003 to discuss poor taxi outcomes, in terms of taxi availability, service levels, waiting times, driver shortages and a booking system that allows drivers to reject short trips.

The government has, however, made some incremental changes — but these do not address availability or service quality. These changes include:

- an adjustment package that allows holders of perpetual hire car licences to surrender them for an equity in taxi plates. The government expects approximately 300 hire car plates to be converted to taxi plates over the 12 months to the end of 2004.

- the introduction of measures such that taxi drivers who use trunk radios will incur fines of $1100. Many taxi drivers had been using these radios to share jobs involving passengers who had phoned them directly rather than through radio networks.

- a twelve-month trial of an arrangement under which taxi drivers who take radio bookings will not learn the destination until the passenger is in the taxi.

The government commissioned a review of service standards in May 2004. The interim review report was released in September 2004, recommending that the government allow trunk radios and cease the 'no destination' trial.

In its 2004 NCP annual report to the Council, New South Wales offered to undertake another independent review of the Passenger Transport Act if requested by the Council. New South Wales contended that the 1999 IPART review had erred by assuming there was a quantitative barrier to entry to the taxi sector. New South Wales noted that it does not impose any restriction on the number of taxi licences, because the Ministry of Transport makes new plates available on demand at market prices. New South Wales provided data to the Council in September 2004 that indicated that 45 perpetual licences had been issued in 2000, 107 in 2001, 13 in 2002 and 77 in 2003 (67 of which arose from surrendered hire car licences). (These data appear to contradict New South Wales' 2003 information that no applications for perpetual licences had been received in recent years.) In addition, 200–300 short term and wheelchair accessible taxi licences were issued in each of these years.

The New South Wales Government has not introduced the reforms as recommended by the NCP review, although the number of new entrants to the taxi industry has been quite significant in recent years (around 6 per cent in 2000, 7 per cent in 2001, 3 per cent in 2002 and 5 per cent in 2003). Even if the IPART review had erred, the government could still have offered the recommended 5 per cent increases each year via an auction. This approach would have allowed the market to reflect licence values based on the knowledge that a reform program had commenced. However, given the government's concerns about the IPART review, the Council considers that another independent review of this legislation would have merit. Such a review should thoroughly address the extent to which New South Wales' regulatory arrangements for taxis constitute a restriction on competition and the nature of any remedying reform package.[1] As such, the Council considers New South Wales' review and reform activity to be incomplete.

B2 Tow trucks

Tow Truck Industry Act 1998

The Tow Truck Industry Act requires tow truck operators to be licensed by the Tow Truck Authority. The New South Wales Government commenced a six-month trial of a job allocation scheme for tow trucks on 20 January 2003 and committed to review the Act six months after the scheme began. The review was not finalised when the Council finished the 2003 NCP assessment

[1] The review should also assess the new restrictions imposed in 2004 to stamp out innovations such as informal networks using trunk radios.

and it concluded that New South Wales had not completed its review and reform activity in this area.

The review was completed in March 2004 and considered the competition impacts of the Act. It concluded that tow truck licensing arrangements in New South Wales represent a low barrier to entry (for tow truck operators in metropolitan areas, application and registration fees total $1060 and drivers' annual fees are $152) and provide a net public benefit. The review also considered clause 69(2) of the Tow Truck Industry Regulation 1999 which permits a tow truck operator licensed in another state to tow a damaged vehicle from that state into New South Wales, but does not allow an operator licensed interstate to collect a vehicle in New South Wales and tow it to another state unless the operator also has a New South Wales licence. The Minister for Transport Services has approved amendments to the regulations so interstate operators no longer need a New South Wales licence for towing vehicles from New South Wales to other states. However, these amendments have not yet been implemented.

The Council considers that New South Wales has not met its CPA clause 5 obligations in relation to tow trucks legislation because the amendments to clause 69(2) have not been introduced.

B6 Ports and sea freight

Marine Safety Act 1998

New South Wales repealed several pieces of shipping legislation, consolidating their provisions in the Marine Safety Act. Before conducting a review of the Act, New South Wales initially awaited advice from the Australian Government on its review of the Uniform Shipping Laws Code, which provides for common national safety standards for commercial vessels. However, New South Wales learnt that the Australian Government's review would not be completed for some time. It thus proceeded with its review of the Marine Safety Act and decided that provisions and associated Regulations dealing with recreational vessels (which comprise most of the Act) would commence in the second half of 2004.

In its 2003 NCP assessment, the Council found that review and reform activity was incomplete because the NCP review of the Marine Safety Act had not been completed. The review was finalised in March 2004. The Act's restrictions on competition are mainly associated with the requirement to hold licences, registrations, certificates and other approvals connected with the operation of sea vehicles. The review recommended that these 'marine safety licences' be retained because the benefits to the community (especially safety benefits) outweigh the costs, the licences do not serve as significant barriers to being a vessel master or crew member, and mutual recognition protocols apply to registration, survey and competency certificates.

While New South Wales has not completed its reform of the Marine Safety Act, the NCP review found that the Act's restrictions have a net public benefit. The Council thus considers that New South Wales has met its CPA clause 5 obligations in this area.

C1 Health professions

Dentists Act 1989
Dental Practice Act 2001

Following a review of the Dentists Act, the Dental Practice Act was enacted and implemented review recommendations, with the exception of retaining ownership and employment restrictions. New South Wales argued that the Dental Practice Act, by allowing for exemptions from these restrictions on a case-by-case basis, gave effect to the spirit of the review. In the 2003 NCP assessment, the Council considered that the exemption process created a barrier to entry and that the state had not adequately considered less restrictive methods to achieve the objective of the legislation (that is, to protect the health and safety of members of the public). It thus assessed New South Wales as failing to meet its review and reform obligations in this area.

Subsequently, the passage of the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 removed these restrictions.

The Council thus assesses New South Wales as having complied with its CPA clause 5 obligations in this area.

Dental Technicians Registration Act 1975

The Dental Technicians Registration Act requires dental technicians to be registered with the Dental Technicians Registration Board to carry out technical work. It also prohibits non-dental technicians from carrying on technical work, except in certain circumstances.

In the 2003 NCP assessment, the Council did not explicitly consider the Dental Technicians Registration Act because it understood that the state had reviewed the regulation of dental technicians in conjunction with the broader review of the Dentists Act. However, New South Wales subsequently advised that a review of dental technician regulation was undertaken as part of the Commonwealth–State review of partially regulated occupations. This review recommended the repeal of the registration provisions. The New South Wales Government considered the review's findings in 1995 and rejected the recommendation on public health and safety grounds.

The Council considers that this Act restricts competition because it appears to preclude non-dental technicians from undertaking such activities. This

preclusion may disadvantage providers of technical dental work in New South Wales compared with those in less regulated jurisdictions. Most other jurisdictions either do not regulate the activity of dental technicians or do not prescribe limitations on the performance of technical work.

New South Wales has provided the Council with a regulation impact statement (RIS) prepared for the Dental Technicians Registration Regulation 2003. However, the Council does not consider the RIS for the subordinate regulation to represent a robust public interest case for the restriction in the primary Act itself. Further, the RIS only contains some limited analysis of the benefits of infection control. In particular, it not clear why employers of persons engaged in dental work, such as dental laboratories, are unable to manage infection control given that they may be liable for the negligent actions of their employees. The RIS also only considers the regulation's costs in terms of the incremental impact of amending the regulations to meet the objectives of the Act, rather than considering the costs of the restriction itself.

The Council accepts that there may be some public interest arguments for regulating dental technicians in light of the potential health risks. However, in the absence of a robust public interest case for retaining the restriction in the enabling legislation, it is not clear that risks to the public are significant.

The Council thus assesses that New South Wales does not comply with its CPA clause 5 obligations in relation to this profession, because it has not provided a public interest case for rejecting the review's recommendations.

Nurses Act 1991

The review of the Nurses Act recommended, among other things, removing minimum age requirements for nurses and revising practice restrictions relating to childbirth. In the 2003 NCP assessment, the Council considered that the review recommendations were consistent with compliance with CPA clause 5. However, the Council assessed the state's progress in reforming nursing legislation as being incomplete, given that Parliament had not passed the Nurses Amendment Bill 2003, which incorporated review recommendations.

The *Nurses Amendment Act 2003* has now been passed. The Council thus assesses New South Wales as having met its CPA obligations in relation to nurses legislation.

Optical Dispensers Act 1963
Optometrists Act 1930
Optometrists Act 2002

Following a review of the Optometrists Act 1930, New South Wales enacted the Optometrists Act 2002, which implemented review recommendations, with the exception of removing ownership restrictions. New South Wales argued that removing ownership restrictions would result in a progressive

concentration of optometry ownership and that competition might marginally improve in some areas but would diminish in other areas. In the 2003 NCP assessment, the Council did not consider that these arguments provided a convincing public interest case for retaining the ownership restrictions. It therefore assessed New South Wales as failing to meet its review and reform obligations in this area.

However, the passage of the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 removes these restrictions.

The Council therefore assesses that New South Wales has met its CPA clause 5 obligations in relation to optometry legislation.

Pharmacy Act 1964

Council of Australian Governments (CoAG) national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own, and allow friendly societies to operate in the same way as other pharmacists (see chapter 19). Compliance with these requirements requires New South Wales to remove these restrictions from the Pharmacy Act.

On 17 February 2004 the New South Wales Government introduced the omnibus National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, which included these reforms to pharmacy regulation as part of a suite of competition policy reforms. These amendments to pharmacy regulation, if passed, would have been consistent with CoAG requirements, and the state would have met its review and reform obligations in this area.

The Bill was withdrawn on 4 May 2004. The pharmacy related amendments were then included in the subsequent National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 — an omnibus health Bill.

On 5 May 2004, the Prime Minister advised New South Wales that it would not attract a competition payment penalty if it amended its legislation to:

- increase from three to five the maximum number of pharmacies that may be owned by an individual pharmacist
- permit friendly societies to own and operate up to six pharmacies (Howard 2004a).

These reforms fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from three to five, CoAG outcomes require that such restrictions be removed. In addition, the proposed amendments would not address disparities between the treatment of friendly society and community

pharmacies. They also increase restrictions on competition, rather than removing them, by restricting friendly societies to owning six pharmacies. Previously, no such restriction applied.

Nonetheless, New South Wales subsequently amended its omnibus health bill to replace CoAG compliant provisions with provisions consistent with the Prime Minister's statement. Pursuant to these changes, Parliament passed the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill, with assent on 6 June 2004.

The Council acknowledges that it is the responsibility of the Australian Government to determine the level of competition payments payable to each jurisdiction. However, under the CPA, the Council is obliged to monitor and assess jurisdictional progress in implementing the recommendations of reviews that meet CoAG requirements for rigour and transparency. The national review of pharmacy regulation meets these standards.

Given that New South Wales has not implemented reforms to pharmacy regulation consistent with CoAG requirements, the Council assesses that the state has failed to meet its CPA obligations in relation to pharmacy legislation.

Podiatrists Act 1989

The Council understands that the key recommendation of the Podiatrists Act review was to replace the whole-of-practice restrictions on podiatry with core practice restrictions, restricting certain foot treatments to podiatrists, nurses and medical practitioners. The New South Wales Government introduced an exposure draft of the Podiatrists Bill to Parliament in 2003 that broadly incorporated review recommendations on practice restrictions and would repeal the Podiatrists Act. In the 2003 NCP assessment, the Council considered the reforms were consistent with the CPA guiding principle, but assessed the state's progress in this area as being incomplete because the legislation had not been implemented.

Following the passage of the *Podiatrists Act 2003,* the Council assesses that New South Wales has met its CPA obligations in relation to podiatry regulation.

D Legal Services

Legal Profession Act 1987

New South Wales has been progressively implementing reforms arising out of the review of its Legal Profession Act. The state expects to introduce further legislation in 2004 to implement the outcomes of the national Model Laws Project.

The state's outstanding legal profession reform obligation — from a competition policy perspective — relates to professional indemnity insurance. The state has indicated it will examine this issue as part of the Model Laws Project, which is developing minimum national standards for professional indemnity insurance. Chapter 19 contains further information on national processes.

The Council assesses that New South Wales has not yet met its CPA clause 5 obligations in relation to the review and reform of its legal profession.

E Other professions

Wool, Hide and Skin Dealers Act 1935

The issues paper for the review of the Wool, Hide and Skin Dealers Act recommended repeal of licensing. The final report (completed in June 2002), however, recommended retaining the licensing requirement because it provides a low cost and effective deterrent to crime with secondary benefits in disease control. The review also recommended narrowing the Act to cover only sheep and cattle, removing the nominal licence fee ($10) and renewing licences on a three-year (rather than annual) basis. It considered these changes would help to reduce the cost of regulation.

These recommendations were supported by the Pastoral and Agricultural Crime Working Party review, which found that stock stealing continues to be a major crime in New South Wales and has increased in recent years in response to the rising value of cattle and the exhaustion of wool stockpiles. It also found that wool, hides and skins can easily be stolen and on-sold because they lack identifiers. The working party recommended retaining the licensing regime as the most effective means of tracking and investigating trade, but modifying it based on the pawnbroker licensing provisions (given the similar risk relating to trade in stolen property). The government accepted the review recommendations and Parliament passed amending legislation in March 2004.

The Council thus assesses New South Wales as having complied with its CPA obligations in this area.

Travel Agents Act 1986

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

New South Wales is progressing towards the implementation of reforms but the completion of reform activity has been delayed by the need to finalise a number of issues at the national level, including the review of contribution arrangements to the Travel Compensation Fund and its prudential and reporting requirements and the review of qualification requirements to ensure uniformity across jurisdictions.

Because reform is incomplete, the Council assesses New South Wales as not having met its CPA obligations in relation to travel agents regulation.

Shops and Industries Act 1962 (hairdressers)

In 2000 the Department of Industrial Relations commenced a review of part 6 of the Shops and Industries Act (formerly known as the *Factories, Shops and Industries Act 1962)*, which regulates hairdressers. Provisions of the Act dealing with hairdressers established a licensing scheme that ensures all hairdressers are appropriately qualified to practise in the trade. The Act also prescribed TAFE as the sole provider of hairdressing training in New South Wales. The review recommended that these restrictions be removed, but that legislation continue to prevent unqualified people from hairdressing by specifying the qualifications required to act as a hairdresser for a fee. Amending legislation to implement the review recommendations received assent on 6 November 2003.

The Council thus assess New South Wales as complying with its CPA obligations in relation to hairdressers regulation.

Commercial Agents and Private Inquiry Agents Act 1963

New South Wales regulates the private investigation and debt collection industry under the Commercial Agents and Private Inquiry Agents Act. The government established a working party in late 1997, which recommended replacing the Act with new legislation, adopting a business licensing (rather than an occupational licensing) approach, and removing licensing requirements for repossession agents and process servers.

New South Wales completed an NCP review of the Act in April 2002, which found that the Act provides a net public benefit by reducing costs to clients and reducing the risk of criminal activity or harm to the public. It also found that regulatory objectives may be achieved only through a licensing system. The review recommended removing the following restrictions, which could not be justified in the public interest: the requirement for licensees to be in charge of a business; the distinctions between commercial agent and private inquiry agent licences; and certain compliance requirements for licence holders. The Commercial Agents and Private Inquiry Agents Bill, which implements review recommendations, was introduced to Parliament in June 2004 and passed on 21 September 2004.

The Council thus assesses that New South Wales has met its CPA clause 5 obligations in relation to commercial agents and private inquiry agents.

F1 Workers' compensation insurance

Workers Compensation Act 1987

Under the Workers Compensation Act, workers compensation insurance is underwritten by the WorkCover Authority of NSW. In 2001 the New South Wales Government decided not to proceed with previously legislated, but non-implemented, competitive private underwriting of workers compensation insurance. Against the background of a large and rising WorkCover Authority debt, New South Wales commissioned a further review by McKinsey & Co. The review report recommended that private underwriting of the scheme should not be pursued until it is fully funded, and that core functions such as claims and asset management should be opened to tender (McKinsey & Company 2003). The government introduced the Workers Compensation (Insurance Reform) Bill in mid-November 2003 to give effect to the recommendations of the McKinsey & Co report. This legislation was enacted later the same month.

For reasons outlined in chapter 9, the Council has not assessed New South Wales' compliance with its CPA obligations in this area for the 2004 NCP assessment.

G2 Liquor licensing

Liquor Act 1982
Registered Clubs Act 1976

New South Wales completed its review of the Liquor Act and the Registered Clubs Act in October 2003. The review report was released in 2004 following the government's response to a summit on alcohol abuse conducted in August 2003. The review identified the following restrictions on competition:

- *The requirement to hold a licence*. The review concluded that the benefits to the community of some form of licensing outweigh the costs and that any new licensing system should focus more clearly on the harm minimisation, local amenity and probity matters. The review discussion paper noted that the issues required to be considered in the social impact assessment of applications for an increase in gaming machine numbers were 'consistent with the local amenity interests that could be considered in a process for granting a liquor licence and imposing conditions on a licence' (New South Wales Department of Racing and Gaming 2002, p. 35).

- *Restrictions on the removal of a licence, once granted, to another location.* The substantial difficulties and costs associated with moving a licence (or the prohibition on removal for some licence types) create 'an obvious barrier to entry'. (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The 'needs test' that allows any person who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public.* The review noted that 'the majority of 'needs' objections are made by existing or potential business operators who understandably have a desire to limit competition' (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The highly prescriptive and complex nature of the licence application process.* This can result in applicants incurring significant legal costs and also in lengthy application periods during which an opportunity cost may be incurred. The review recommended that the licence application process should be dealt with 'administratively wherever practicable.' (New South Wales Department of Racing and Gaming 2003, p. 49). Under this approach, the Liquor Administration Board would determine licence applications and the Licensing Court would be responsible for hearing appeals in respect of administrative decisions relating to the grant of applications, and disciplinary proceedings against licensees.

- *The high fees charged on grant of a new licence.* New licence fees are based on factors such as the size and location of the business and the fees paid by other licence holders in the area. The review's discussion paper (New South Wales Department of Racing and Gaming 2002, p. 10) noted that in 1998-99, the fee for a new hotel licence varied from $25 000 (in regional New South Wales) to $175 000 (in Sydney). The fee for a new off-licence ranged from $2500 (in regional New South Wales) to $60 000 (in Sydney). Existing licences changed hands at similar prices. No annual or periodic licence fee or charge is imposed. The review's preferred option was the payment of an application fee, along with an annual administration fee. It considered that these fees should not act as a barrier to entry, with the application fee intended to cover the cost to the government of processing an application, and with the annual fee set at a reasonable level to cover the cost of maintaining and administering the liquor licensing system, and the costs associated with the increased demands on public services.

- *The number of licence categories and the conditions attaching to each category*. The review found instances where these conditions reduce the ability of licensed premises to respond to changing industry demands. It suggested:

  – reducing the number of licence categories from 21 to seven

  – removing the requirement that a restaurant serve liquor only with meals unless the restaurant holds a dine-or-drink authority. It found this condition unduly restrictive and noted that the high cost of a dine-or-drink authority prevents many restaurateurs from operating in a

more flexible way. The condition's removal should be balanced with requirements that restaurants operate primarily as dining venues.

- requiring the primary activity of a business licensed to sell packaged liquor to be the sale and supply of liquor

- deeming some types of venue (convenience stores, milk bars, service stations) unsuitable for selling packaged liquor, but noting a possible ongoing need for such multipurpose venues in certain remote and regional areas of New South Wales (New South Wales Department of Racing and Gaming 2003, p. 46).

- *Restrictions on opening hours*, which the review acknowledged as beneficial in promoting harm minimisation and local amenity.

In February 2004 the government introduced amendments that remove the needs test and substitute a social impact assessment (SIA) process with two levels — SIA (A) and SIA (B) — for licence applications. SIA (A) applies where a licence is being removed within 500 metres in a metropolitan area or 5 kilometres within a regional area, where trading hours are not being extended; licence conditions are not being varied; and the total area of the proposed premises does not exceed the area of existing premises by more than 10 per cent. SIA (B) applies to all other applications.

The regulations that govern the SIA process for a new hotel or off-licence require the applicant to pay a fee of $6600 and to provide an extensive set of information to the Liquor Administration Board, including

- an extensive demographic profile of the local community, including such variables as the number of households in rented accommodation and the number of persons living in the area who work as labourers or in related occupations, and the numbers of persons aged 15 or over who do not hold tertiary or trade qualifications

- the number of licensed premises and the trading hours for those premises

- social health indicators, including the rates and general trend in alcohol related hospital admissions, the number of emergency accommodation services in the area, the number of drug and alcohol counselling services operating in the area, the number of domestic violence services and refuges operating in the area, and the capacity of these services to meet demand

- the impact on noise, parking and traffic levels and on the amenity of the local community (including the potential for increased littering, vandalism and public drunkenness).

Copies of SIA applications must be forwarded to various groups prescribed in legislation (for example, the police, community groups representing people of non-English speaking backgrounds etc.). If the proposed premises are adjacent to more than one local area, the study may need to be replicated.

Approval of the SIA by the Liquor Administration Board is expected to take between two and six months, or longer if a party dissatisfied with the board's decision exercises their right of appeal to the Appeals Board and the New South Wales Supreme Court. The SIA is in addition to the previous licence application process, and successful completion of the SIA is a prerequisite to lodging a licence application to the Licensing Court.

The amendments remove the Liquor Administration Board's power to fix licence fees for the grant of hotel and off-licences which will henceforth be prescribed in the Act's regulations and will be set initially at $2000. They also introduce annual fees for hotel and off-licences to be set initially at $2500. Finally, the amendments introduce a prohibition on service stations selling packaged liquor and extend the restriction on granting an off-licence to a convenience store to similar stores such as mixed businesses, corner shops and milk bars.

The government's amendments commenced operation from 1 August 2004 and it is therefore difficult for the Council to assess their impact on competition. In its previous NCP assessments, the Council supported the removal of the needs tests for new licences and their replacement with a more broadly based assessment of potential harm. The Council welcomes the New South Wales Government's action to remove the most important restriction in its legislation, but notes that New South Wales has introduced a licence application procedure that appears to be significantly more complex, protracted and costly than that of other jurisdictions. The licence application procedure proposed by New South Wales adds considerable paperwork, six months or more of processing time, increased uncertainty and a higher cost to a licence application process that the review had already found to be time consuming and expensive. A liquor store owner wishing to move an outlet more than 500 metres (even within the same shopping centre) and/or wishing to expand the outlet's size by more than 10 per cent is required to go through the SIA(B) process. The Council has been informed by industry participants that they estimate the cost of preparing an SIA (B) may be upwards of $50 000 on top of existing Court and legal costs of approximately $60 000. The high costs of a licence application are likely to be a major deterrent to small businesses seeking to enter packaged liquor retailing.

All other jurisdictions have adopted administrative approaches to the grant of liquor licences. Typically, a licensing board determines applications having regard to potential harm via consideration of local government and police evidence. All jurisdictions have licence fees below those introduced by New South Wales — for example, a packaged liquor licence has an application fee of $515 in Victoria and $1444 in the ACT. In correspondence with the Council, New South Wales maintains that there is significant degree of similarity between its SIA process and the NCP compliant Queensland public interest test. However, the New South Wales process appears likely to be more time consuming, imposes more onerous information requirements and has higher fees and legal costs than its Queensland counterpart.

The prohibition on licensing of service stations was canvassed in the review discussion paper which, as noted previously, considered that some provision

for the sale of packaged liquor might be necessary in remote areas. In its annual NCP report to the Council, New South Wales supported the ban with evidence put to the Summit on alcohol abuse, including evidence that one-third of all driver and pedestrian deaths are alcohol related. The government considers that there is a strong public interest in disassociating liquor availability from driving and, therefore, minimising the risks associated with drink driving. Although the Summit on alcohol abuse was not an NCP review, the Council accepts the New South Wales Government concerns regarding drink driving.

Although it has introduced a complex licence application process, New South Wales has not acted on several issues raised in the review discussion paper, including issues relating to the simplification of licence categories and the service of alcohol in restaurants. The government has announced that further amendments to the liquor laws are planned for 2005, to implement some initiatives arising from the NCP review. It envisages that the amendments will:

- reduce cost and complexity for licence applicants, while providing a simple avenue for people to raise concerns about applications without the need for legalistic objections

- simplify the liquor laws, including reducing the number of licence categories.

In addition, the government will evaluate the operation of the SIA process in 2005–06 with a view to extending it to other types of liquor licences.

New South Wales has removed its needs test and replaced it with an application process which, while it no longer allows objections on competition grounds, imposes a complex procedure upon licence applicants. It has also replaced the high fee charged upon the grant of a new licence with an annual fee, albeit at a level higher than that charged by other jurisdictions. It is too early to assess the impact these changes will have on competition, and assessment is complicated by the fact that some lesser reforms are yet to be implemented.

The Council thus assesses that New South Wales as having met its CPA obligations in relation to liquor licensing for 2004. However, the Council will revisit the issue in its 2005 NCP assessment when it anticipates that a clearer picture of the competition impacts of New South Wales reforms should be apparent.

H1 Fair trading legislation

Funeral Funds Act 1979

The review of the Funeral Funds Act was released in April 2002. It found that the impact of the legislation on competition was not significant. The review established a net public benefit case for retaining key consumer protections such as ensuring industry participants are of fit character and clarifying consumer rights in pre-paid contracts. Proposed new legislation would remove restrictions on funeral directors where these are not justified on public benefit grounds. These restrictions cover:

- the minimum and maximum numbers of fund directors and trustees
- the nomenclature of funeral funds
- a cap on management fees and benefits paid.

Reform was delayed until the position of funeral expense policies under Australian Government financial services reforms could be clarified. The Funeral Services Amendment Bill 2003, incorporating the recommended reforms, was passed by the New South Wales Parliament on 9 March 2004.

The Council thus assesses New South Wales as having met its CPA clause 5 obligations in this area.

H3 Trade measurement

Trade Measurement Act 1989
Trade Measurement Administration Act 1989

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and Territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

New South Wales is pursuing completion of the national response which will enable it to implement reforms to its Trade Measurement Acts.

The Council thus assesses News South Wales as not having met its CPA clause 5 obligations in this area because it has not completed reforms.

I2 Child care

Children (Care and Protection) Act 1987
Children and Young Persons (Care and Protection) Act 1998

New South Wales is planning to replace the Children (Care and Protection) Act, which regulates commercial child care services, with a Regulation in the Children and Young Persons (Care and Protection) Act. The Regulation will include provisions for the licensing of children's services, information for parents, child numbers, staffing standards, facility standards and administrative procedures and policies. A regulatory impact statement found that the restrictions on competition (primarily licensing and standards setting) are in the public interest. New South Wales sought public feedback on the regulatory impact statement before implementing new legislation which commenced on 30 September 2004.

The Council assesses that New South Wales has met its CPA obligations in this area.

I3 Gambling

NSW Lotteries Corporatisation Act 1996
Public Lotteries Act 1996

In New South Wales, the Public Lotteries Act[2] governs lotteries and other games such as lotto and soccer pools. This Act provides for the licensing of operators of commercial lotteries and for the regulation of such games. When NSW Lotteries was corporatised under the NSW Lotteries Corporatisation Act, it was granted an exclusive licence to conduct seven lottery games until 2007, after which the licences become contestable. New South Wales conducted statutory five-year reviews of these Acts.

The reviews recognised the potential costs arising out of exclusivity arrangements (such as limits on the ability of the Government to transfer a licence to another party), but recommended retaining the exclusive licence until the legislated expiry date. They considered that repealing the provisions before this date would have a net public cost. The reviews also found that NSW Lotteries has made long term decisions based on the exclusive period specified in the licences, and that to reduce the exclusivity period might undermine the corporation's financial viability. Further, the reviews noted that no other jurisdiction appears likely to make their licences contestable before this date, so lifting the restrictions would be a significant competitive

[2] The Public Lotteries Act replaces the *Lotto Act 1979,* the *NSW Lotteries Act 1990* and the *Soccer Football Pools Act 1975.*

disadvantage to New South Wales and result in a transfer of lottery activity and revenue to other states.

The review reports were tabled in Parliament in December 2002 and have been endorsed by the New South Wales Government. No legislative change is necessary.

The Council thus assesses New South Wales as having met its CPA obligations in relation to lotteries legislation.

Casino Control Act 1992

In 1998, the New South Wales Treasury reviewed the Casino Control Act which grants an exclusive casino licence for Star City Casino. The review recommended retaining the exclusive licence, noting that the tender process, the upfront fee and the special casino taxation regime minimise the anticompetitive effects of the licence. The review report also highlighted the increased ease of monitoring for illegal activity, promoting and monitoring product integrity, and managing social problems if there is only one venue. The government signalled its support for these conclusions, but asked the Treasury to consider further material in developing the review recommendations. A revised report was completed in March 2003.

The revised report reached broadly the same conclusions as those of the first report. It acknowledged that licence exclusivity may not be consistent with NCP principles. However, it found no feasible or less restrictive option for casino gambling at this time, given the nature of the exclusivity agreement with the single licence holder and the liability for substantial compensation from terminating the agreement. Additionally, the revised report found that the exclusive licence arrangement is a reasonable approach to the gradual liberalisation of the gaming market in an environment of community apprehension about the possible social costs. While noting that the monopoly profits of the venture are shared with the New South Wales public via a progressive taxation regime, the revised report acknowledged that the establishment of exclusivity arrangements to maximise taxation revenue is not a sound basis for the restriction.

The revised report recommended that the government consider the case for liberalising the casino gaming market as the 2007 exclusivity expiry date approaches. Specifically, it recommended that consideration be given to providing no new exclusive casino licences, not renewing existing exclusive licences on expiry, and removing any legislative barriers to new entry into the casino gaming market. The government endorsed the review's recommendations and released the report in October 2003. No legislative change is necessary.

The Council thus assesses New South Wales as having met its CPA obligations relating to casino regulation.

Gaming Machines Act 2001

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* originally regulated gaming machine activity. A joint review of these Acts commenced in 1999 but was not completed. In 2001, the Government implemented changes to gaming machine regulation (including a freeze on the number of machines in hotels and clubs) via the Gaming Machines Act, which took over the gaming regulation sections of the Liquor Act and the Registered Clubs Act. The Act caps machine numbers, both in total (104 000) and by venue type (450 for clubs and 30 for hotels), establishes markets for existing licences, limits operating hours for gaming machines, restricts advertising and introduces other harm minimisation measures. The Department of Racing and Gaming completed a review of the Gaming Machines Act in March 2003 and released the review report in June 2003. The review found a net public benefit arising from the harm minimisation measures contained in the Act. The review also found that a restriction on the transferability of licences from nonmetropolitan to metropolitan New South Wales is important in maintaining social cohesion in rural areas.

The harm minimisation reforms (such as the requirement for clubs and the casino to establish links with problem gambling counselling services, restrictions on advertising and restrictions on hours of opening) fall within the range of those measures endorsed by the Productivity Commission and CoAG, thus meeting the CPA clause 5 guiding principle (see chapter 9).

The Council has previously expressed concern regarding the Gaming Machines Act's granting of TAB Limited's exclusive investment licence. While TAB Limited competes with other commercial operators and financial institutions in the supply and finance of gaming machines, it is the only entity that can enter into profit sharing arrangements with hotels as part of the terms of supply. In its 2003 NCP assessment, the Council found that the activities of TAB Limited under the terms of the investment licence provide more options in the supply of gaming machines, but that greater competition would result if other suppliers who meet probity requirements were allowed to carry out similar functions. The Council considered that New South Wales did not establish a public benefit case for exclusivity.

New South Wales contends that TAB Limited does not receive a competitive advantage from the profit sharing arrangements. It argues that no hotel will enter into profit sharing arrangements unless TAB Limited can offer a material advantage to the acquirer in some other aspect of the transaction (machine quality, purchase price, finance costs or terms of trade) in which it is subject to vigorous competition. New South Wales also notes that the competitive advantage provided by the exclusive licence is insignificant, with less than 1 per cent of hotels with gaming machines financing through profit sharing.

The Council considers that the exclusive investment licence granted to TAB Limited does not meet the CPA guiding principle and, therefore, assesses New South Wales as not having met its CPA obligations in relation to the

Gaming Machines Act. However, the Council acknowledges that the market impact of the exclusive licence is not significant and notes the Government's announcement that it intends to withdraw the exclusive investment licence via legislation that will go before Parliament in the spring 2004 session.

Racing Administration Act 1998

The New South Wales review of its racing and betting legislation recommended only minor changes to the state's racing and betting legislation. The government accepted the review recommendation to allow bookmakers to operate as proprietary companies. The review also recommended retaining other restrictions, such as the Act's requirement for a $200 minimum phone bet for bookmakers and the prohibition on interstate betting providers advertising in New South Wales.

New South Wales reduced the minimum bet on metropolitan gallops to $50 on 1 October 2003 and will abolish the minimum bet from 1 July 2004. To address the Council's concerns regarding cross-border advertising restrictions, New South Wales commissioned a further review of these provisions. The review argued that advertising restrictions provide a public benefit by:

- helping to ensure those who obtain benefits from racing results contribute to the racing industry. Removing the restrictions would potentially divert business from TAB Limited (which contributes a proportion of its earnings to the racing industry) to corporate bookmakers in jurisdictions that do not require bookmakers to pay product fees to the racing industry and that provide favourable taxation and regulatory conditions relative to New South Wales.

- ensuring the integrity of totalisator odds, which can be undermined by non-totalisator wagering products (particularly 'TAB-odds' products) that are legal in some other jurisdictions

- ensuring New South Wales punters do not suffer the consequences of the lack of security from placing their funds with interstate bookmakers operating in jurisdictions with different regulatory regimes.

The Council acknowledges that preventing interstate bookmaker advertising may assist TABs and thus the racing industry but notes that there are alternative approaches to funding the racing industry (as discussed in the Productivity Commission report on gambling). These alternatives, however, require interjurisdictional agreement. Similarly, the other benefits claimed for the advertising restrictions result from differences in regulation across jurisdictions.

Currently, without interjurisdictional cooperation, the findings of the New South Wales review have some limited validity: restrictions on advertising appear to be the only way to achieve the objectives of the legislation. The Council thus assesses New South Wales as having met its CPA obligations in

relation to the Racing Act. In the long term, however, the Council looks to jurisdictions to resolve cross-border betting issues and devise a method of funding the racing industry that minimises the need to restrict competition among betting providers.

J1 Planning and approval

Environmental Planning and Assessment Act 1979 and planning and land use reform projects

Following 1998 reforms, New South Wales has a streamlined 'one-stop shop' system for development, building and subdivision approvals under the Environmental Planning and Assessment Act (EP&A Act). Accredited certifiers can compete with councils in the assessment of compliance functions and technical standards.

The government is reviewing planning. A White Paper released in February 2001 proposed whole-of-government strategic planning, greater community involvement, and greater accessibility to planning information. It proposed integrating all policies and plans for environmental and land use issues into one instrument for each local government area, one regional strategy for each region and one state planning document.

The New South Wales Government advised the Council in December 2002 that it had not listed the EP&A Act for review under the CPA, so did not intend to report on this legislation. It stated that it would continue, however, to provide information on 30 planning and land use reform projects to the Council.[3] The Council advised New South Wales that it accepted that the competition restrictions in the EP&A Act are being examined in the context of other review processes, and that it would monitor the progress of the 30 listed projects.

New South Wales reported in April 2004 that 27 of the 30 projects had been completed or almost completed. The remaining three projects relate to planning approvals and standards, and have been subsumed in reviews of state, regional and local planning functions. In these reviews, the Government is seeking to improve planning efficiency; reduce transaction costs; balance environmental, social and economic priorities; realise community priorities; and provide predictability for land use. The government considered these reviews and in September 2004 announced planning reforms that will require legislative and administrative change.

[3] Box 10.1 of the 2003 NCP assessment (NCC 2003, volume 1) listed the 30 reform projects.

The Council considers that New South Wales has made substantial progress in addressing potential restrictions on competition in planning and development processes, but that it has yet to implement all of the reforms. The Council thus assesses New South Wales as not having met its CPA clause 5 obligations in this area because review and reform activity is incomplete.

J2 Building professions

Architects Act 1921

A national review of state and territory legislation regulating the architectural profession was completed in 2002. Chapter 19 provides more details on this national review.

In May 2003 New South Wales introduced the Architects Bill 2003, which provides for the repeal of the Architects Act and the implementation of the nationally agreed framework, including:

- the introduction of the concept of a registered architect
- the removal of the requirement that at least one-third of the directors of a company offering architectural services be chartered architects
- the inclusion of community, consumer and industry representatives in the membership of the NSW Architects Registration Board.

The Bill was passed in 2003 and given royal assent on 10 December 2003. The Council assesses New South Wales as having met its CPA clause 5 obligations in this area.

12 Victoria

A3 Fisheries

Fisheries Act 1995

In the 2003 National Competition Policy (NCP) assessment, the National Competition Council concluded that Victoria had reviewed the Fisheries Act, and had implemented only some of the reforms recommended by the review. The key outstanding matters were:

- fishery management costs, for which the review recommended that the government introduce full cost recovery
- limits on the number of persons that a licence holder may employ, for which the review recommended further review
- minimum and maximum quota holdings and transfer restrictions in the abalone fishery, for which the review recommended removal or reduction
- pot controls in the rock lobster fishery, for which the review recommended removal (provided enforcement costs are sustainable).

The government has since made substantial further progress. In April 2004 it began to phase in the full recovery of fishery management costs from users. The phase-in will be completed in 2006. The government has also announced that it will implement the review recommendation to remove quota holding and transfer controls currently applying in the abalone fishery.

Further consideration of two other matters has resulted in decisions against reform. Employee limits on holders of licences in certain input managed fisheries will be retained to help control effort, and in the abalone fishery to assist enforcement.

In relation to the rock lobster fishery, caps on the number of pots per boat and pots in total will be retained, as the government believes that removing these caps is likely to increase various costs:

- stock losses — having longer periods between pot lifts is expected to lead to higher rock lobster losses due to in-pot predation by octopus
- harm to wildlife — having more pots is expected to increase seal injury and mortality through both attempted entry to pots and entanglement with lost gear

- fishing costs — individual fishers may attempt to exclude other fishers from high catch rate fishing ground through using more pots.

At the time of reporting the Council had not had sufficient opportunity to complete its examination of the evidence presented by the government in support of its decision to retain rock lobster pot controls.

The Council assesses that Victoria is still to completely fulfil its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act. Subject to there being sufficient evidence for retaining rock lobster pot controls, Victoria will have met these obligations when it has completed removing quota holding and transfer restrictions in the abalone fishery..

A5 Agricultural and veterinary chemicals

Agriculture and Veterinary Chemicals (Victoria) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The federal Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Victorian legislation is the Agricultural and Veterinary Chemicals (Victoria) Act.

The federal Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed. The Council thus assesses that Victoria has not met its CPA obligations in relation to this legislation.

Agriculture and Veterinary Chemicals (Control of Use) Act 1992

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

A national review examined 'control of use' legislation for agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. Victoria has implemented the review recommendations, including the removal of the requirement for mandatory insurance for ground spraying businesses. However, it considers there are public interest reasons for retaining the

requirement for aerial sprayers to hold an approved public liability insurance policy. Victoria argues that aerial spraying is a higher risk activity than ground spraying because it is carried out in areas or conditions in which ground spraying could not be done, especially in the case of herbicides for noxious weed control. Victoria has indicated its support for a national scheme for aerial spraying, and will continue to work towards the establishment of such a scheme. Victoria has also indicated that it would be willing to reconsider the insurance requirement for aerial spraying once a national working group that is examining the issue has made its recommendations.

The Council notes Victoria's position that mandatory insurance for aerial sprayers is in the public interest, and the government's undertaking to reconsider its position following the report of the national working party on this issue. The Council considers that Victoria has completed review and reform activity as far as possible.

The Council thus assesses Victoria as having complied with its CPA obligations in this area, while noting that the report of the national working party examining licensing conditions for aerial spraying businesses may recommend further change.

A9 Mining

Extractive Industries Development Act 1995

In October 2001 Victoria released the report of an independent review of its Extractive Industries Development Act. The review recommendations included:

- amending the Act to allow the Minister to approve a work plan and set conditions
- allowing conditions to be appealable by applicants to the Victorian Civil and Administrative Tribunal
- removing the requirement for quarry operators to obtain a work authority from the Minister
- having the first level of responsibility for site restoration rest with the work authority holder and the second level rest with the landowner
- encouraging extractive industry associations to take a more active role in industry regulation matters
- discontinuing the certification of quarry mangers over a reasonable time period, so the industry has time to develop its own accreditation process.

Victoria accepted the majority of the review recommendations relating to administrative policy and procedures. Where it did not accept a recommendation, it provided a public interest case for its position, generally finding no link between these recommendations and competition policy concerns. Victoria considered that the abolition of the work authority requirement, for example, would not result in improved administrative efficiency because all the precursor approvals would still be required. Abolition would also reduce certainty that all of the necessary stages and approvals had been satisfied. Victoria did not consider that it would be in the public interest to make the landowner (in default of the work authority holder) responsible for site restoration, because the landowner has no operational control of the activities on the site.

In the spring 2003 session of Parliament, Victoria introduced legislation that implements the government's response to the review. The Council thus assesses Victoria as having met its CPA clause 5 obligations in this area.

B2 Tow trucks

Transport Act 1983

The Transport Act and associated Regulations allow only licensed tow trucks to operate on highways. The Secretary of the Department of Infrastructure issues licences for trade, accident and heavy towing and assesses the 'need' for an overall number of licences in each region. New licences for accident and heavy tow trucks are issued only if they are consistent with the perceived need. The Victorian Government rejected several of the key recommendations of the 1999 review of the tow truck legislation. It did not accept, for example, that the need restrictions on accident and heavy accident licences should be removed, arguing that an oversupply of tow trucks would lead to 'law of the jungle' conditions at accidents, which would stress accident victims and have an adverse impact on the state's accident attendance allocation system. The government also did not accept that the need criterion should be removed for location restrictions, arguing that such a change could result in certain regions not having adequate truck numbers to attend accidents.

In the 2003 NCP assessment, the Council indicated its concern that the need restrictions may increase accident towing fees by adding to the capital cost of tow truck licences. Accident towing licences in metropolitan areas were worth around $70 000 in 1999, and they rose in value to around $130 000 in 2003. The Council was concerned that this capital cost may outweigh any service quality benefits that consumers gain from the restrictions. Further, Victoria did not demonstrate that the need and location restrictions are the only means of achieving orderly conduct at accident scenes and ensuring adequate tow truck availability in all regions.

In preparing the 2003 NCP assessment, the Council asked Victoria for the public interest evidence for the need based entry restrictions. The government

asserted that the current arrangements work well and that job allocation arrangements would be unworkable as a result of 'the sheer number of operators'. The Council considered that Victoria did not fully account for alternative mechanisms for dealing with public interest concerns in the tow truck industry. Further, Victoria did not show that job allocation arrangements, without the need restrictions, would not effectively moderate tow truck operators' behaviour. The 2003 NCP assessment thus found that Victoria had not met its CPA clause 5 obligations in relation to tow trucks.

Following the 2003 NCP assessment, the Victorian Government reconsidered its tow truck regulatory arrangements, with a view to more cogently arguing that the need restrictions generate net benefits to the community. It commissioned an independent public benefit test to examine whether the need restrictions can be justified on net public benefit grounds, whether there is a dependency between the need and location restrictions and the job allocation arrangements, and whether there are alternative, less restrictive ways of achieving the objectives of the legislation.

The public benefit test report was prepared by the Allen Consulting Group and completed in June 2004 (ACG 2004). Victoria provided the report to the Council in August 2004. This report recommends retention of the quantitative restrictions on accident tow truck licences and their removal in the case of heavy accident tow truck licences.

The report identifies the costs of the accident tow truck licence restrictions as reduced efficiency, increased market power, a flow on of licence values to regulated licence fees and administration costs. The benefits are seen as:

- curbing undesirable behaviour at accident scenes
- helping to ensure tow truck operators are available 'where needed'.

The report considers that these two benefits slightly outweigh the costs, and also factors into its cost–benefit calculations the transitional costs associated with removing the licence restrictions. The report argues that such de-restriction would result in trade tow trucks (for which there almost 700 licences, similar to the number of accident tow truck licences) suddenly competing with accident tow trucks for a declining accident tow market. Towing/repair businesses would be likely to experience deterioration in their trading conditions, and the value of licences would probably fall sharply. Importantly, police evidence to the review argued that such a rapid increase in licence numbers would overwhelm the job allocation system, leading to the 'law of the jungle'.

The Council has some strong reservations about the two benefits argued in the public benefit test report. The Department of Infrastructure operates an Accident Allocation Scheme whereby the Accident Allocation Centre (AAC) allocates the required number of tow trucks to an accident within a geographic zone. The ACC allocates the tow or tows for each accident to the tow truck company ('depot') that has had the smallest number of tows in that month in that zone. As stated by the Allen Consulting Group report, the

Accident Allocation Scheme has improved community safety by eliminating the need for tow trucks to 'race' to accident scenes, cutting back congestion at accident scenes and reducing aggressive or violent behaviour by tow truck operators (ACG 2004, p. ix).

The Council agrees that such roster arrangements generate substantial behavioural benefits to the community. The Council considers that this regulation is warranted and is probably sufficient to yield these benefits. Unlike the report, the Council is not convinced that there is a need for licence restrictions to ensure the operability of the Accident Allocation Scheme and police supervision of accident scene behaviour.[1] However, the report took into account advice from the Victoria Police that the licence restrictions critically underpin adherence to the Accident Allocation Scheme.

In relation to the second 'benefit' of licence restrictions, the Allen Consulting Group report argues that, by increasing tow truck licence values via the restrictions, the government is better able to require the licensees in country areas ('where towing services are more likely to be in short supply') to provide services (the report refers to 'community needs', which are not defined) that would otherwise be unprofitable (ACG 2004, p. vii and p. 24). The Council considers it is unlikely that individuals or companies that pay large sums for tow truck licences because entry is restricted would be more inclined to undertake unprofitable activities than tow truck operators who had to pay less for licences in unrestricted markets.

The Council considers that the review has not demonstrated strongly that the licensing restrictions on accident tow trucks provide a net public benefit to the community. The review report itself relies substantially on the transitional costs of licence de-restriction to argue against such a change. However, in making its overall assessment, the Council has taken into account:

- the transitional costs associated with de-restriction
- the fact that police have argued that the licence restrictions are vital to the efficacy of the accident allocation scheme
- the likelihood that de-restriction may not yield significant benefits for consumers because:

[1] South Australia is the other jurisdiction that has operated a roster system for many years and has not supplemented the roster with a quantitative restriction on tow truck numbers. The Accident Towing Roster Review Committee determines the number of roster positions in each zone in South Australia, but the NCP review in that state argued that there is no justification in terms of competition principles for restricting entry to the zone rosters. The South Australian Government has accepted this recommendation.

- tow truck fees are regulated and current fee levels suggest that high licence values (which may reflect both scarcity and the capacity to access the smash repair industry) are not adversely inflating charges

- the roster system (for which there is a clear public benefit) of itself reduces the scope for tow truck operators to innovate or offer a differentiated service

- there is currently overcapacity in the industry.

On balance, the Council assesses that Victoria has met its CPA obligations in relation to the review and reform of tow truck legislation. Nevertheless, the Council considers that, in the absence of the transitional costs, the need for licence restrictions to operate in tandem with the accident allocation system remains in doubt. Therefore, the Council encourages Victoria to look to ultimately move to a system that retains the demonstrated public benefits of the accident allocation system without supplementation through a barrier to entry.

B6 Ports and sea freight

Port Services Act 1995

The Russell Review focused on the Port Services Act, which established new corporatised entities as successors to the old port authorities. The review examined the structure and operation of Victorian ports. The government released the review report and its response in July 2002, then began to implement 22 actions. A key review recommendation was to reintegrate the land and water management of commercial trading ports to enable them to better compete with interstate ports.

The *Port Services (Port of Melbourne Reform) Act 2003* was the first piece of legislation that the government introduced to implement the actions arising from the Russell Review. Passed on 13 May 2003, this Act established a new, integrated corporation to manage the port of Melbourne from 1 July 2003 — that is, it replaces the Melbourne Port Corporation with the Port of Melbourne Corporation. The Minister's second reading speech stated that the new legislation 'will clearly vest in the new Port of Melbourne Corporation management responsibility for the waters which serve the port, including the shipping channels in those waters' (Batchelor 2003).

The 2003 NCP assessment found that review and reform activity was incomplete because the government had not introduced the second Bill to implement the review recommendations. The Minister introduced this Bill — the Port Services (Port Management Reform) Bill — to Parliament in October 2003. Enacted on 11 November 2003, this legislation addresses remaining issues arising from the Russell Review, including arrangements for the establishment, classification and management of commercial and local ports;

port safety, security and environmental obligations; new governance arrangements for the port of Hastings; the management of channels serving the port of Geelong; and the holding and licensing of channels generally.

The Council considers that Victoria has met its CPA clause 5 obligations in relation to the Port Services Act.

C1 Health professions

Pharmacists Act 1974

The Council of Australian Governments' (CoAG) national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own, and allow friendly societies to operate in the same way as other pharmacists (see chapter 19). No restrictions apply to friendly societies in Victoria, so compliance with CoAG recommendations requires the state only to remove restrictions on the number of pharmacies from the Pharmacists Act.

The Victorian Government released a discussion paper in August 2002, inviting comment on the implementation of CoAG compliant outcomes for Victoria. On 11 May 2004, the government introduced the Pharmacy Practice Bill 2004 into Parliament, increasing to five the number of pharmacies that a pharmacist could own. The Bill continued to allow friendly societies to own an unlimited number of pharmacies.

Debate on the Bill was subsequently withdrawn to enable the government to take into account advice from the Prime Minister, dated 1 June 2004, that Victoria would not attract a competition payment penalty if it adopted pharmacy ownership reforms similar to those in New South Wales.

The reforms contained in the Pharmacy Practice Bill 2004 as introduced, if implemented, would fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from three to five, CoAG outcomes require that jurisdictions remove such restrictions.

The Council assesses that Victoria has not met its CPA obligations in this area as review and reform activity is incomplete. If Victoria implements the pharmacy regulation amendments contained in the Pharmacy Practice Bill, the Council will assess the state as failing to comply with its CPA obligations in relation to this profession.

C2 Drugs, poisons and controlled substances

Drugs, Poisons and Controlled Substances Act 1981

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. CoAG is now considering the proposed response out of session. Victoria intends to implement the review recommendations following CoAG endorsement.

The Council accepts that jurisdictions are considering the Galbally report at the national level through CoAG. However, because the Galbally reforms have not yet been implemented, Victoria has not yet met its CPA obligations in this area.

D Legal services

Legal Practice Act 1996

Following the 1995 review of the *Legal Profession Practice Act 1958*, the state adopted a suite of competition reforms by introducing the Legal Practice Act. It also committed to review monopoly provision arrangements for public indemnity insurance in light of any national scheme developed by the Standing Committee of Attorneys-General (SCAG). Chapter 19 provides further information on this interjurisdictional review process.

SCAG is continuing to develop a professional indemnity insurance scheme that will facilitate interstate practice. In the interim, insurance requirements vary across jurisdictions. Victoria has advised that subject to the outcome of national processes, the state proposes to retain the Legal Practitioners Liability Committee as the statutory insurer for legal practitioners (except for barristers).

Unlike professional indemnity, which is subject to ongoing national processes, no reform has been considered for whether non-legally qualified conveyancers should be able to perform some or all of the legal work involved in conveyancing transactions. In the 1999 NCP assessment, the Council considered that Victoria had complied with its CPA commitments to legal practice review and reform (except in relation to some unresolved matters relating to the professional indemnity insurance monopoly) (NCC 2003b, p. 4.10). This position was based partly on Victoria's 1999 NCP annual report, which reported that the Legal Practice Act provides for non-lawyers 'to carry on a conveyancing business' (Government of Victoria 1999, p. 6).

However, following representations from Victorian conveyancers, it has become apparent that the Act allows conveyancers to compete only in the

nonlegal aspects of conveyancing. Subsequently, on 29 September 2003, the Council sought clarification from Victoria on whether the recommendation of the 1995 report of the Attorney-General's Working Party was acted on — specifically, the recommendation that the Legal Ombudsman be required to report on whether non-legally qualified conveyancers should be able to perform some or all of the legal work involved in conveyancing transactions. The Victorian Department of Treasury and Finance response of 16 March 2004 indicated that the Victorian Government did not accept the recommendation and noted that the report was not a report of the then government, but rather reflected the views of the Attorney-General's Working Party. However, the department confirmed that provisions to replace the Legal Practice Act were being reviewed, including provisions in relation to conveyancing businesses.

On 24 March 2004 the Council secretariat wrote to the State Government outlining its position on conveyancing restrictions. It noted that the Council's finding of compliance, based on a misperception arising in the context of the 1999 assessment, could no longer stand because:

- the continuation of this restriction reduces the potential benefits to consumers
- the restriction is not consistent with practices in most other jurisdictions.

The secretariat accepted that the State Government was reviewing the Bill to replace the Legal Practice Act. However, it advised Victoria to remove the conveyancing restriction or provide an independent and robust public interest case for the net community benefit from retaining this restriction. The Department of Treasury and Finance response of 6 May 2004 confirmed that conveyancing practice restrictions are being considered as part of the review of a Bill to replace the Legal Practice Act but it did not specifically address the Council's concerns.

This matter is currently the subject of discussion within government but no final position has been taken.

Victoria has made significant reforms to legal profession regulation, except in areas of professional indemnity insurance and removal of reservations on conveyancing practice.

While the Council notes that reforms to professional indemnity insurance are subject to national processes, the removal of reservations on conveyancing practice is not. Rather, it is subject to a review process which is unrelated to formal NCP processes.

There is no compelling evidence from other jurisdictions that conveyancing practice reservations reduce risks to consumers (refer to Baker 1996). Indeed, conveyancing costs fell by 17 per cent in New South Wales between 1994 and 1996 following the removal of the legal profession's monopoly on conveyancing, while no attendant quality problems have arisen. Victoria should therefore remove conveyancing restrictions or expedite its Legal

Practice Act review processes. Any review outcome to retain the restriction will need to also clearly and transparently demonstrate the public interest in its retention.

The failure to address conveyancing practice restrictions is of key concern to the Council. When coupled with ongoing national processes for professional indemnity insurance, the Council assesses the state as not yet having achieved compliance with CPA obligations in relation to the legal profession.

E Other professions

Private Agents Act 1966

Freehills Regulatory Group completed an NCP review of Victoria's Private Agents Act in 1999. The review recommended retaining occupational licensing for security providers and making further efforts to develop a national regulatory model for the industry. It recommended replacing licensing requirements for commercial agents with a 'light handed' registration scheme (combined with greater use of trade practices/fair trading legislation to deal with problem operators) and reforms of the commercial agents' surety scheme. The review also recommended reviewing whether the exemptions provided to certain occupational groups are still appropriate.

The government delayed its response to the NCP review while it conducted a broader policy review of the Act and undertook further consultation. In May 2004 Parliament passed a Bill to implement legislative changes arising from the NCP review. The Council thus assesses Victoria as having met its CPA obligations in this area.

Travel Agents 1986

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

Victoria did not support the original review recommendations to remove entry qualifications for travel agents or to replace compulsory membership of the Travel Compensation Fund with a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund.

Victoria considers that some qualification standards should be retained as consumers of travel, especially those travelling overseas, are highly vulnerable to potentially serious problems, such as being stranded in a remote location as a result of an incorrect flight booking. Further work on qualifications has been undertaken at a national level and the Ministerial

council has endorsed new limited qualification requirements which will apply only to travel agents selling overseas travel.

Victoria is retaining the requirement for Travel Compensation Fund membership, given uncertainties about the continuity of private supply, the stability of premium levels and the potential for the fund to be forced to become insurer of last resort under the proposed competitive model.

Victoria passed the Estate Agents and Travel Agents Acts (Amendment) Bill in May 2004 that gives effect to the working party's findings by removing the Crown's exemption from the need to be licensed as a travel agent when carrying on the business of a travel agent. Regulations to implement national changes to qualification requirements are to be made before the end of 2004.

The Council assesses that Victoria has not met its CPA obligations in relation to travel agents legislation because it has not completed reform in this area.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Transport Accident 1986
Accident Compensation Act 1985
Accident Compensation (Workcover Insurance) Act 1993

In Victoria, statutory monopolies provide compulsory third party and workers' compensation insurance. Second reviews of compulsory third party and workers' compensation insurance were finalised in 1999 and 2000 respectively, reversing the first reviews' recommendations for multiple provision. In its 2003 NCP annual report, the Victorian Government informed the Council that it would review the scope for greater contestability in the provision of the two insurances via further outsourcing ('market testing') by the Transport Accident Commission and the Victorian WorkCover Authority. The Transport Accident Commission has recently re-tendered its internal audit, financial analysis modelling, asset consulting, tax advisory, vocational care and community care services, and has undertaken further market testing of some other service areas. The Victorian WorkCover Authority has re-tendered its outsourced claims management services, resulting in 30 per cent of employers changing agents and two overseas agents entering the market. It has also re-tendered its actuarial and advertising services.

The second NCP reviews had recommended third party reviews of the Transport Accident Commission and Victorian WorkCover Authority premiums, and the government considered the mechanism for such reviews for some time. In April 2003, the Essential Services Commission advised the government that the expected revenue associated with the Transport Accident Commission's proposed premium for 2003-04 is consistent with the solvency of the transport accident compensation scheme. The Essential

Services Commission will review the premium of the Victorian WorkCover Authority for the first time in 2004-05.

For reasons outlined in chapter 9, the Council has not assessed Victoria's compliance with its CPA obligations in this area for the 2004 NCP assessment.

H3 Trade measurement legislation

Trade Measurement Act 1995
Trade Measurement (Administration) Act 1995

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990, to facilitate interstate trade and reduce compliance costs (see chapter 19). Because the national review and reform of trade measurement legislation has not been completed (see chapter 19), the states and territories involved (including Victoria) have yet to meet their CPA obligations in regard to trade measurement legislation.

The Council thus assesses Victoria as not having met its CPA clause 5 obligations in relation to its trade measurement Acts because it has not completed its reforms.

I3 Gambling

Tattersall Consultation Act 1958
Public Lotteries Act 2000

After reviewing the Tattersall Consultations Act, Victoria repealed this Act and replaced it with the Public Lotteries Act. The new legislation initially allowed for multiple lottery licences from 2004, when Tattersall's exclusive licence was due to expire. In the 2002 NCP assessment, the Council assessed Victoria as meeting its CPA obligations in relation to lottery legislation.

However, in 2003 Victoria extended Tattersall's exclusive licence until 2007. The extended licence was granted on the basis that Tattersall's agrees with the Gaming Minister on a format that discloses the costs of operating its gaming related licences in Victoria, so as to create greater transparency in financial reporting. Victoria remains concerned that any move to increase licence numbers is likely to limit economic benefits for Victoria when every other state has a sole licensed operator. Victoria also considers that the larger

prize pools and larger jackpots resulting from a single seller increase player interest and ticket sales. Further, it has stated that it will seek the cooperation of New South Wales in facilitating a national market once the exclusive licence in New South Wales lapses in 2007. It also flagged its intention to issue public lottery licences after July 2007 through a transparent, contestable, competitive tender.

In the 2003 NCP assessment, the Council considered that these considerations did not constitute a sufficient public benefit argument for extending exclusivity, and it assessed Victoria as not having complied with its CPA obligations in relation to lotteries. While the Council retains this assessment, it does not regard the noncompliance as significant, recognising that Victoria has established the conditions for multiple provision of lottery services and the opportunity for a national market after 2007.

J2 Building regulations and approval

Building Act 1993 (provisions relating to building approval)

The Building Act allows competing public and private agents to certify building work. Private building surveyors must meet entry requirements, be registered and have professional indemnity insurance. Victoria completed its review of the Act in 1999. The review (which also considered the *Architects Act 1991*) was conducted by the Freehills Regulatory Group. The government did not complete its response to the review until after the Council had finalised the 2003 NCP assessment, which concluded that Victoria's review and reform activity in this area was incomplete.

For building permits, the review recommended the continued auditing of building surveyors to maintain standards, and the integration of aspects of the planning permit and building permit application processes. The government supported this recommendation in its December 2003 response. It considered the review in conjunction with its assessment of the Architects Act, partly to account for opportunities to integrate Victoria's building and architects legislation. Victoria introduced amendments to the two Acts to Parliament on 4 May 2004 in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. Also in 2004, the government intends to consider those recommendations of the NCP review of the Building Act that would require increased regulation (recommendations relating mainly to building practitioner registration — see below). The Building Commission released an industry discussion paper in September 2003 that indicates that Victoria will prepare a regulatory impact statement before revising building regulation.

The Council assesses Victoria as having met its CPA clause 5 obligations in this area.

J3 Building occupations

Architects Act 1991

Victoria did not participate in the 2000 Productivity Commission review of state and territory legislation that regulates the architectural profession, having subjected its Architects Act and subordinate legislation to an independent NCP review in 1998-99 (which also addressed Victoria's Building Act — see above). At the time that the Council completed the 2003 NCP assessment, Victoria had not announced its response to the review, and the Council thus assessed the state's review and reform activity as being incomplete.

The government released its response in December 2003, accepting the recommendations to retain title restriction and registration requirements for architects and to require at least one director or partner of architectural businesses to be registered as an architect. Victoria implemented the review recommendations of the joint architects and building legislation review concurrently in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. Among other things, this legislation:

- increases the membership of the Architects' Registration Board from eight to 10 members to include two members with building industry experience and to provide that neither consumer representatives nor industry representatives may be architects

- relaxes the restriction imposed by limiting the use of terms such as 'architecture' and 'architectural', while ensuring persons describing themselves as architects are registered as such

- reduces the requirement that architects comprise two-thirds ownership or control of a partnership or company practising architecture, so that now only at least one director or partner must be a registered architectural practitioner.

Victoria has completed the reform process, and the Council assesses it as having met its CPA obligations.

Surveyors Act 1978

Victoria's review of the Surveyors Act was completed in July 1997. It recommended retaining restrictions on entry, removing surveyors' domination of the Surveyors Board, changing entry requirements to allow surveyors to gain practical training through course work, reducing some commercial restrictions and reducing barriers to the interstate mobility of surveyors.

The Victorian Government substantially accepted the 12 review recommendations that required government action. It implemented the five

recommendations that did not require legislative change. The Land Surveying Bill 2001 addressed the other seven recommendations, but lapsed in November 2002 when Parliament was prorogued for an election. When the Council completed the 2003 NCP assessment, the government had not re-introduced the legislation and the Council found that Victoria's review and reform activity was incomplete.

The Surveying Bill 2004, which was based on the Land Surveying Bill and accounted for comments received in a consultative process, was passed by Parliament on 3 June 2004. The Council thus assesses Victoria as having met its CPA clause 5 obligations.

Building Act 1993 (provisions relating to building practitioners)

Victoria completed a review of the Building Act in 1998-99. Recommendations included integrating the Act with the Architects Act, making all building companies and partnerships subject to registration requirements, and retaining the Minister's power to issue compulsory insurance orders. Minor changes to the Building Act — relating to insurance and the requirement to include a member of the Architects Registration Board on the Building Practitioners Board — were included in the Architects (Amendment) Bill, which Parliament passed on 2 June 2004. The Building Commission is reviewing submissions to the 2003 discussion paper that considered the NCP review's recommendations for increased regulation of the building industry in some instances. In addition to the recommendation that all building companies and partnerships be registered, the review recommended that all building practitioners, whether sole traders or employed, be required to be registered unless employees of adequately insured companies and partnerships.

The Building Commission proposes to release a position paper on possible new Regulations in 2004. Victoria has stated that revisions to legislation will be based on thorough consideration of the submissions received, and the 2003 discussion paper indicated that Victoria will prepare a regulatory impact statement before introducing revised building Regulations.

The Council considers that Victoria has met its CPA obligations for this Act, but expects the government to apply its gatekeeping process to any new building legislation and Regulations that may be introduced following the consultation process.

13 Queensland

A3 Fisheries

Fisheries Act 1994

In the 2003 National Competition Policy (NCP) assessment, the National Competition Council concluded that Queensland had reviewed the Fisheries Act, and implemented some of the reforms recommended by the review. The key outstanding matters were:

- fishery licensing — the review recommended replacing the variety of vessel and occupational licences with a single fishery access licence
- fishery management costs — the review recommended increasing the recovery of fishery management costs from fishers and reducing cross-subsidies between fishers
- quota trading controls (a minimum quota holding and the prior approval of quota transfers) in the spanner crab fishery — the review recommended removing these controls.

Queensland has made further progress since the 2003 assessment. In October 2003 it removed minimum quota holdings from the Spanner Crab Management Plan. In September 2004 the Queensland Parliament passed the Primary Industries and Fisheries Legislation Amendment Act 2004, which amongst other things removed the requirement for prior approval by the Chief Executive of the Department of Primary Industries and Fisheries for quota transfers in all fisheries (including the spanner crab fishery).

The Government is considering proposals to address the other outstanding matters — fishery licensing and the recovery of fishery management costs.

The Council assesses that Queensland is yet to complete its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act. The state will have met these obligations when it has:

- introduced a single fishery access licence to replace the existing variety of vessel and occupational licences
- begun to increase the recovery of fishery management costs from fishers.

A4 Forestry

Sawmills Licensing Act 1936

Under the Sawmills Licensing Act, Queensland prohibits the operation of a sawmill without a licence. The Act provides the chief executive of the Department of Primary Industries with absolute discretion over the issue of licences and the conditions attached to them. Generally, licences require operators to keep records and return information to the chief executive.

A review of the Act was completed in December 2000, recommending its repeal. In September 2004 the Queensland Parliament passed the Primary Industries and Fisheries Legislation Amendment Act 2004, which amongst other things provided for the repeal of the Sawmills Licensing Act on 1 January 2005.

The Council assesses that Queensland has met its CPA obligations related to the Sawmills Licensing Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Queensland) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Queensland legislation is the Agricultural and Veterinary Chemicals (Queensland) Act.

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed. The Council thus assesses that Queensland has not yet met its CPA obligations in relation to this legislation.

Agricultural Chemicals Distribution Control Act 1966

Beyond the point of sale, agricultural and veterinary chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

Queensland was one of four jurisdictions that participated in the national review of agvet chemicals 'control of use' legislation (see chapter 19). Queensland amended its Agricultural Chemicals Distribution Control Act and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* to implement all relevant NCP reforms within the state's area of responsibility. In December 2003 further amendments to Queensland's legislation (to cater for low regulatory risk chemicals) came into effect, in conjunction with amendments to the national Agricultural and Veterinary Chemicals Code.

Queensland has completed review and reform of this legislation as far as possible. The Council thus assesses Queensland as having complied with its CPA obligations in this area, while noting that the report of a national working party examining licensing conditions for aerial spraying businesses may require further change.

B1 Taxis and hire cars

Transport Operations (Passenger Transport) Act 1994

Queensland's Transport Operations (Passenger Transport) Act limits the number of taxi and hire car licences, enabling Queensland Transport to determine the number that it considers are necessary in each 'taxi service area'. The department considers a range of factors, including population data, community perceptions of service standards, waiting times and kilometres travelled per taxi.

Queensland released its NCP review of the Act in September 2000. The review recommended that the government retain the existing arrangements for issuing taxi and hire car licences, arguing that easing supply constraints would increase travel costs and reduce the supply of wheelchair accessible taxis. The Council found in its 2002 NCP assessment that the review report did not provide a strong public benefit case for its recommendation to restrict taxi numbers, and noted that the review assumptions and method were unclear. The government did not make any significant changes to taxi and hire car arrangements over the following 12 months, and the Council concluded in the 2003 NCP assessment that Queensland's approach to taxi reform was inconsistent with the four broad principles of reform that the Council circulated to jurisdictions in 2002 (see chapter 9).

The Queensland Premier and the Transport Minister stated in a media release on 31 August 2003 (after the Council had completed the 2003 NCP

assessment) that the government would 'maintain our regulated taxi industry' (Beattie 2003). In its 2004 annual report to the Council, the Queensland Government stated that it will regularly release new taxi licences in taxi service areas in response to performance criteria related to waiting time. Using these criteria, Queensland Transport approved the release of 130 new taxi licences for the 27-month period from August 2003. This is equivalent to a 4.5 per cent increase in taxi numbers over this period, and includes 100 wheelchair accessible taxi licences in Brisbane. On 30 May 2004 the Minister for Transport and Main Roads launched a discussion paper, which proposed that the government continue to issue taxi licences and set the minimum number of licences in a taxi service area by reference to waiting time performance.

The government has not changed its arrangements for the release of taxi and hire plates. These arrangements lead to only a small number of additional plates being released after ad hoc reviews of different geographic areas. The government plans to introduce a formulaic approach to reviewing and potentially increasing taxi numbers after November 2005. The approach will take into account data on population, ageing, waiting times, average number of jobs per taxi, seasonal peaks and availability of other public transport. Queensland Transport aims to have the formula developed by late 2004. It is not clear whether the formulaic approach will lead to any significant change in taxi and hire car supply outcomes.

The Council thus concludes that Queensland remains noncompliant with its CPA obligations.

B4 Rail

Transport Infrastructure Act 1994
Transport Infrastructure (Rail) Regulation 1996

Queensland undertook a public benefit test of those rail safety provisions of the Transport Infrastructure Act and the related Regulation that could impede competition. Queensland Transport completed the review report in March 2003 after consulting the rail industry and relevant government agencies, and referring to the recommendations of the New South Wales inquiry into the Glenbrook rail accident. The Queensland report concluded that net benefits arise from the safety accreditation system that applies to rail managers and operators. The Queensland Government introduced safety provision amendments to Parliament in the Transport Infrastructure and Another Act Amendment Bill 2003 on 3 June 2003. When the Council finalised the 2003 NCP assessment, this Bill was still in Parliament and the Council thus found that reform was incomplete. Parliament passed and enacted this legislation later in 2003, with only minor technical amendments.

The Council considers that Queensland has met its CPA clause 5 obligations in relation to rail legislation.

B6 Ports and sea freight

Transport Infrastructure Act 1994
Transport Infrastructure (Ports) Regulation 1994

In the 2002 NCP assessment, the Council found that Queensland's review and reform activity did not meet its CPA obligations because it had not amended provisions of the Transport Infrastructure Act that potentially restrict significant port activities to authorised ports, the limits of which are defined in the Transport Infrastructure (Ports) Regulation 1994.

Following discussions with the Queensland Government, the Council understands that the government's primary objective is to ensure it can prevent the development of a new port if existing ports have excess capacity. This objective partly reflects concerns about the environmental impacts of new ports in terms of pollution, destruction of habitat and potential damage to the Great Barrier Reef. The review found that other Queensland (and Australian Government) statutes provide for constraints on various port activities, including controls over infrastructure and land development, and over activities affecting maritime safety and the environment. The review concluded that these statutes do not provide a holistic approach to government objectives in the areas of development, environment and safety, but probably allow the government to achieve its objectives. Several of these Acts were included in Queensland's legislation review schedule, and the Council has assessed these as meeting CPA obligations.

The Council is concerned that Queensland's review of the Transport Infrastructure Act provisions relating to port activities adopted a 'reverse onus of proof'. Rather than applying the CPA clause 5 guiding principle that legislation should not restrict competition unless (1) the benefits of the restriction outweigh the costs and (2) the objectives of the legislation can only be achieved by restricting competition, Queensland's review adopted the position that competitive reforms should be introduced only if they can be demonstrated to yield a net benefit. However, the Council notes that other Acts containing provisions with a similar overall effect on competition have been assessed as compliant with the CPA.

The Council thus concludes that Queensland has met its obligations in relation to the Transport Infrastructure Act.

C1 Health professions

Chiropractors and Osteopaths Act 1979
Chiropractors Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland's outstanding reform obligation relating to the regulation of chiropractors was to implement a core practices review recommendation to reserve only thrust manipulation of the spine to chiropractors, medical practitioners, osteopaths, and physiotherapists. The Queensland Treasurer endorsed the review recommendations and introduced a Bill to implement these reforms in June 2003. The reforms had not been passed at the time of the 2003 NCP assessment, so the Council assessed the state's progress in review and reform of chiropractic legislation as incomplete.

The subsequent passage of the *Health Legislation Amendment Act 2003* implements core practice reforms. The Council thus assesses Queensland as having met its CPA obligations in relation to chiropractors.

Dental Act 1971
Dental Practitioners Registration Act 2001
Dental Technicians and Dental Prosthetists Act 1991
Dental Technicians and Dental Prosthetists Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland's outstanding obligations in relation to the regulation of the dental profession were to implement core practice reforms and remove specific commercial restrictions. While the government accepted these reforms, the amending legislation had not been passed at the time of the 2003 NCP assessment. The Council thus assessed the state's progress in the review and reform of dental practitioner legislation as incomplete.

Queensland implemented outstanding reforms to dental professional legislation through the *Health Legislation Amendment Act 2003*. In particular, the Act implements review recommendations to allow dental hygienists and therapists to perform tasks that were once reserved for dentists.

The Council thus assesses that Queensland has met its CPA obligations in relation to its dental practitioner legislation.

Medical Act 1939
Medical Practitioners Registration Act 2001

The Council's 2003 NCP assessment considered that the outstanding NCP issue in relation to the medical profession was the practice restrictions that apply to surgery of the muscles, tendons, ligaments and bones of the foot and

ankle. Following a meeting between Queensland officials and members of the Council secretariat on 29 July 2004, however, the Council was advised that there was no such restriction in the original medical legislation and that the Health Legislation Amendment Act did not include the introduction of such a restriction.

The Council thus assesses Queensland as having complied with its CPA obligations in relation to the medical profession.

Nursing Act 1992

The Queensland review of the Nursing Act recommended, among other things, retaining practice restrictions for nurses and midwifes, but refining them to:

- allow persons without nursing (midwifery) authorisation to practise under the supervision of a nurse (midwife)

- recognise the role of other health professionals that provide services, within their professional training and expertise, that may be regarded as nursing (midwifery) type services.

The Council's 2003 NCP assessment considered that the proposed reforms were consistent with the CPA guiding principle. However, the Council assessed Queensland as not meeting its CPA obligations in relation to the nursing and midwifery professions because it had not yet implemented the reforms.

The Health Legislation Amendment Bill 2004 which implements the outcomes of the review of the Nursing Act was introduced to Parliament on 19 October 2004. The proposed amendments, among other things, will:

- retain a statutory restriction on nursing practice but provide exemptions for non-nursing staff under the supervision of a nurse and other health professionals providing services within their professional training

- retain a statutory restriction on caring for a woman in childbirth but provide exemptions to ensure a woman in childbirth has access to other appropriate professional health care.

The Council considers that the proposed amendments are consistent with the state's NCP obligations. However, as the amendments have not yet been passed, the Council confirms its 2003 NCP assessment that Queensland has not yet met its CPA obligations in this area.

Optometrists Act 1974
Optometrists Registration Act 2001

The Council's 2003 NCP assessment considered that the outstanding NCP issue in relation to the optometry profession was the restriction on the fitting of contact lenses. Following a meeting between Queensland officials and members of the Council secretariat on 29 July 2004, however, the Council is satisfied that the introduction of the Health Legislation Amendment Act, which implements core practice reforms, resolves this issue.

The Council thus assesses that Queensland has met its CPA obligations in relation to the optometry profession.

Pharmacy Act 1976
Pharmacists Registration Act 2001

The Queensland Government in April 2004 circulated proposed amendments to the Pharmacists Registration Act for comment. These amendments were developed in response to Council of Australian Governments (CoAG) national process recommendations for pharmacy regulation reform (see chapter 19). If passed, they would have complied with desired CoAG outcomes in that they would have provided for:

- the removal of restrictions on the number of pharmacy businesses that a pharmacist may own

- the removal of restrictions that apply to friendly society businesses but not to other proprietors of pharmacy businesses.

On 12 August 2004, Queensland received correspondence from the Prime Minister which advised that provided Queensland, as a minimum, relaxes ownership restrictions to allow pharmacists to own up to five pharmacies each and permit friendly societies to own up to six pharmacies each, it would not attract competition payment penalties.

These reforms fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from four to five, CoAG outcomes require that such restrictions be removed. They also increase restrictions on competition in certain respects, rather than removing them, by restricting friendly societies to owning six pharmacies. Previously, no such cap applied and it was open for friendly societies to apply to the Minister to permit the establishment of a new friendly society pharmacy.

Nonetheless, these amendments, in conjunction with other pharmacy reforms, are included in the Health Legislation Amendment Bill 2004 which was introduced into Parliament on 19 October 2004.

As the proposed reforms fall short of reforms recommended by CoAG national processes, the Council assesses Queensland as not yet having met its review and reform obligations in relation to pharmacy.

Physiotherapists Act 1964
Physiotherapists Registration Act 2001

The Physiotherapists Registration Act replaced the Physiotherapists Act but retained broad practice restrictions. The Health Legislation Amendment Bill 2003 proposed to remove these broad practice restrictions by reserving only the core practice of thrust manipulation of the spine for physiotherapists and other related health professions. In the 2003 NCP assessment, the Council considered that the Health Legislation Amendment Bill 2003 was consistent with the CPA guiding principle. However, it assessed Queensland as not complying with its review and reform obligations because Parliament had not passed the Bill.

The Health Legislation Amendment Act implements these reforms. The Council thus assesses that Queensland has met its CPA obligations in relation to physiotherapists.

Podiatrists Act 1969
Podiatrists Registration Act 2001

The Council's 2003 NCP assessment considered that Queensland had not met its NCP obligation in relation to podiatry because it had yet to remove the outstanding restriction on the practice of soft tissue and nail surgery of the foot. For the 2004 NCP assessment, the state has advised that no such restriction existed, noting that the Podiatrists Registration Act contained a general restriction on the practice of podiatry that the Health Legislation Amendment Act removed.

The Council thus assesses that Queensland has met its CPA obligations in relation to this legislation.

Occupational Therapists Act 1979
Occupational Therapists Registration Act 2001

The key restriction in the Occupational Therapists Registration Act relating to occupational therapists is title protection, which the Council assessed in its 2002 and 2003 NCP assessments as noncompliant. Title protection can restrict competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the fees required of registration applicants restrict entry to the profession of occupational therapy and potentially weakens competition among occupational therapists.

In its 2004 NCP annual report, Queensland advised that it does not intend to amend the Act to remove the title restriction. It considers that title restriction is a basic consumer protection measure that:

- protects consumers from the risk of being harmed by inadequately trained or incompetent providers, by ensuring registered providers are competent and subject to a complaints/disciplinary process

- assures consumers that registered occupational therapists, having satisfied registration requirements, are appropriately trained and fit to practise safely and competently.

Without a robust public interest case, the Council does not accept the state's consumer protection rationale. There does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as the common law, the *Trade Practices Act 1974* and independent health complaints bodies. In addition, many occupational therapists are employed in the public sector — facilities that are well placed to assess the competency of the staff they employ — and consumers are unlikely to seek occupational therapy services without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it notes that the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles. Nonetheless, it confirms its 2002 assessment that Queensland, by not removing title protection restrictions, has not complied with its CPA obligations to review and reform regulations affecting this profession.

Speech Pathologists Act 1979
Speech Pathologists Registration Act 2001

Queensland is the only jurisdiction that reserves the title 'speech pathologist' to practitioners through registration provisions under the Speech Pathologists Registration Act. In its 2004 NCP annual report, Queensland has advised that it does not intend to amend the Act to remove the title restriction. As for occupational therapists, the state considers that title restriction for speech pathologists is a basic consumer protection measure. In particular, it argues that this restriction can reduce information costs to consumers when identifying competent practitioners, enhancing consumer protection.

Without a robust public interest case, the Council does not consider these arguments to be compelling. Many speech pathologists are employed in the public sector. Further, consumers are unlikely to seek speech pathology services without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it accepts that the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles. Nonetheless, it confirms its 2002 assessment that Queensland, by not removing title protection restrictions, has not complied with its CPA obligations to review and reform regulations affecting this profession.

C2 Drugs, poisons and controlled substances

Health Act 1937

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session.

Queensland has advised that it has amended its legislation as far as possible to implement the Galbally reforms. It notes that additional legislative amendments to implement reforms depend on action taken by other parties under national processes (for example, development of an industry code of practice regarding the supply of clinical samples).

The Council acknowledges that the Galbally Review is subject to national processes. However, because Queensland has not fully implemented review recommendations, it has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act 1995
Queensland Law Society Act 1952

The Queensland Government introduced the *Legal Profession Act 2003* (not proclaimed) to implement some review recommendations reforming the regulation of the legal profession. These include:

- facilitating the incorporation of legal practices
- removing separate admission requirements for solicitors and barristers
- allowing interstate lawyers to practise in Queensland without a local practising certificate.

These reforms remove key restrictions on competition and are consistent with earlier reviews of regulatory issues affecting the profession.

The government subsequently passed the *Legal Profession Act 2004* to update and replace the 2003 Act, to improve consistency with the current national model laws. The new Act also includes regulatory matters relating to multidisciplinary practices. The government has advised that additional reforms will be included in a subsequent Bill with any further changes to ensure consistency with the National Legal Profession Model Laws Project (see chapter 19). It has also advised that it will consider reforms to professional indemnity in the context of national processes.

Queensland has made significant reforms by removing competition restrictions in the legal profession through its Legal Profession Act 2004, with further refinements pending. Reforms to professional indemnity insurance are also being addressed at a national level. The Council thus assesses the state's progress in these areas as incomplete.

In contrast to the above reforms, the Queensland Government had announced that it would consider the reservation of conveyancing work through a separate NCP review. It subsequently undertook this review through a competition impact statement (CIS), but decided, contrary to the CIS recommendation, not to allow licensed conveyancers to operate in the state. The CIS considered:

> … *[a] full law degree is not necessary to the achievement of the objectives of the legal practice legislation with respect to conveyancing. If persons are able to meet standards of knowledge and practical training, allowing them to competently perform conveyancing services and have adequate professional indemnity and fidelity insurance, they should be permitted to compete in the market for conveyancing work.* (Government of Queensland 2003, p. 10)

The review noted that the market for conveyancing services is highly competitive and that it is not clear that the introduction of licensed conveyancers would result in lower fees being charged for conveyancing services. However, it also noted that there is no evidence to indicate that fees would not be lower.

In not supporting this CIS recommendation and in correspondence to the Council on 23 August 2004, the Queensland Government has provided the following reasons why it should not adopt the recommendation of the CIS.

- The market for conveyancing services is already highly competitive, with fixed conveyancing fees (some around $200) widely advertised. Allowing nonlawyers into the market does not always result in lower fees as evidenced by the prescribed maximum fees for settlement agents in Western Australia which are high compared to Queensland's competitive fees.

- The costs of establishing a licensing scheme for such a small occupational group, such as conveyancers, are not justified on the basis of only the possibility of some minor marginal gain.

- A small occupational group, such as conveyancers, may not have the critical mass to support the appropriate level of cover, or may be vulnerable to market failure, particularly in an uncertain insurance market.

- Adopting similar fidelity guarantee insurance arrangements as in South Australia or New South Wales where contributions are paid into a trust fund would have a budget impact as the excess from Queensland's equivalent trust fund is paid to the state's consolidated fund.

- Queensland is being singled out, with conveyancers in some jurisdictions being able to offer more limited services or not being legislatively recognised — such as in Victoria.

The Council accepts that the Queensland conveyancing market is relatively competitive. However, the removal of restrictions on competition should only enhance consumer benefits: conveyancers are likely to establish practices only where they consider that they can provide a competitive product. The Council also notes that Western Australia's prescribed fees for settlement agents are maximum amounts only. These fees cannot therefore be validly compared to actual conveyancing fees charged in Queensland as Western Australian settlement agents are able to charge fees below the levels prescribed.

Regarding licensing scheme costs, the Council accepts that there may be some costs in establishing such arrangements. However, the government has not provided evidence of the likely costs or demonstrated that the costs of establishing a licensing scheme would outweigh the consumer benefits of removing the conveyancing practice restriction. The government also has not provided detailed evidence that it has reassessed its insurance concerns in light of the recent stabilisation of the insurance market.

The Council also does not concur that the adoption of fidelity insurance trust fund arrangements will necessarily lead to an adverse budget impact as contributions from conveyancers can potentially be adjusted to cover the expected risks relating to payouts. In this regard, the state has not provided detailed evidence that similar arrangements in other jurisdictions cannot be tailored to adjust for this expected risk or that this risk is material.

Finally, the Council disagrees with Queensland's assertion that it is being singled out. While there are different regulatory arrangements across jurisdictions, the Council outlined in its correspondence of 3 November 2003 to all governments that the provision of services by nonlawyers would be assessed as part of the 2004 NCP assessment. The Council agrees with Queensland that conveyancers in some jurisdictions provide more limited services than in other jurisdictions. This issue is explicitly addressed in the relevant state and territory chapters. In particular, the Council does not yet consider that Victoria has adequately addressed restrictions that limit the ability of nonlawyers to compete with lawyers in the provision of conveyancing services.

Given the above, the Council assesses the state as not having complied with its CPA clause 5 obligations regarding conveyancing.

E Other professions

Pawnbrokers Act 1984
Second-hand Dealers and Collectors Act 1984

Queensland completed the review of the Pawnbrokers Act and the Second-hand Dealers and Collectors Act in June 2002. The review recommended introducing a single licence type to apply to pawnbrokers and second-hand dealers, but repealing the provisions that require collectors to be licensed. It also recommended: introducing a multi-site licence to replace the current requirement for a business to have a licence for each separate site; reforming the 'fit and proper person' test; and streamlining business conduct restrictions. The government accepted the review recommendations, and implemented them via the *Second-hand Dealers and Pawnbrokers Act 2003*, which was passed in October 2003.

The Council assesses Queensland as having met its CPA obligations in relation to pawnbroker and second-hand dealer legislation.

Auctioneers and Agents Act 1971
Property Agents and Motor Dealers Act 2000

PricewaterhouseCoopers completed a review of the Auctioneers and Agents Act in 2000. Queensland implemented the majority of the review recommendations when it replaced the Act with the Property Agents and Motor Dealers Act, including retaining caps on maximum commissions as a transitional arrangement. In November 2003, Queensland amended the Property Agents and Motor Dealers Regulation 2001 to de-regulate motor dealing and auctioneering commissions and buyers' premiums.

In the 2002 NCP assessment, the Council accepted the possibility of a net community benefit in temporarily retaining maximum commissions while educating market participants about their rights and responsibilities. It postponed finalising its assessment of this issue pending Queensland's review of the matter. A further review of commissions was conducted in 2003 out of which some steps were taken to deregulate all commissions and buyer premium fees except commissions for real estate transactions (both private treaty and auctions). The Queensland Government determined, when deregulating the other commissions, that a further review of real estate commissions should be undertaken in late 2004. The preliminary stages of this review have now commenced

The Council thus assesses Queensland as not having met its CPA obligations in this area, because the state has yet to finalise its review and reform of the regulation of real estate commissions.

Travel Agents Act 1988

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The review findings and the working party response to the review recommendations are outlined in chapter 19.

Queensland is currently progressing implementation of the review recommendations to lift the current $50 000 licence exemption threshold and remove the exemption for Crown-owned business entities. The Council thus assesses Queensland as not having met its CPA obligations in relation to travel agents legislation because it has not completed reforms in this area.

Health Act 1937 (provisions relating to hairdressing)

The main recommendation of Queensland's NCP review of hairdressers was to replace the licensing of premises with the licensing of businesses undertaking higher risk (that is, skin-penetrating) procedures. The review recommended that licensing of other activities, including hairdressing, be discontinued.

The *Public Health (Infection Control for Personal Appearance Services) Act 2003* was passed in October 2003 and commenced on 1 July 2004. Under the new legislation, which implements the review's recommendations, higher risk businesses (for example, body piercing and tattooing) will be licensed, but lower risk businesses (such as hairdressing) will not.

The Council thus assesses Queensland as having complied with its CPA obligations in relation to hairdressers.

F1 Workers' compensation insurance

Workcover Queensland Act 1996

The review of workers' compensation insurance was completed in December 2000, leading the government to legislate changes in the *Workers Compensation and Rehabilitation Act 2003* to establish a separate regulatory entity (Q-COMP) from 1 July 2003. The monopoly insurance arrangements continue.

For reasons outlined in chapter 9, the Council has not assessed Queensland's compliance with its CPA obligations in this area for the 2004 NCP assessment.

F2 Superannuation

Superannuation (State Public Sector) Act 1990

Queensland's public sector employees are required to hold a superannuation account with the government-owned superannuation provider, QSuper. Contributors can choose between an accumulation account, which is a fully funded superannuation account, and a defined benefit account, which offers a fixed retirement income. The Superannuation (State Public Sector) Act allows QSuper to use multiple investment fund managers. To date, QSuper has chosen to use just one manager (the Queensland Investment Corporation), which outsources some funds management to private funds.

Queensland reported to the Council that the Government Superannuation Office examined the effects on competition of the Superannuation (State Public Sector) Act and associated Regulations, reporting in early 2003. The review was conducted in accordance with Queensland Treasury's public benefit test guidelines, whereby existing arrangements are compared with less restrictive alternatives. The review accounted for:

- Queensland's view that the Senate's refusal (until June 2004) to pass the Australian Government's choice of fund legislation demonstrates the complexity of the choice issue

- a 2001 review of Queensland's local government superannuation scheme (similar to the QSuper arrangements), which concluded that the monopoly arrangements are necessary to achieve the scheme's objectives

- a major review of Queensland public sector superannuation in recent years, which resulted in public servants being given the choice of the defined benefits scheme or an accumulation account with investment choice.

The Government Superannuation Office's review described the overriding objective of the current legislation as being to ensure equitable access of public sector employees to a superannuation scheme that maximises benefits to members. It considered two alternative models for the government to meet its objectives:

1. One model would allow individual government agencies to remain with QSuper as the superannuation provider for their employees, or make alternative superannuation arrangements. Queensland considers that few, if any, agencies would move away from QSuper.

2. The second model would be a variation on the first, but would allow private sector employees to join QSuper. The review argued that this would add to QSuper's marketing and distribution costs.

The public benefit test found that QSuper can offer higher than average benefits to members because it is a not-for-profit body, has small marketing requirements and enjoys economies of scale as a result of its large guaranteed membership (which also allows QSuper to take a long term investment approach). Queensland argued that the first alternative model would lead to:

- employers and contributors who leave QSuper incurring transitional costs and increased fees
- QSuper losing some economies of scale as some members leave the scheme
- the potential for the Queensland public sector to experience difficulty in attracting staff if the potential employees believe that QSuper is weakened.

Queensland contended that the second alternative model would add to QSuper's costs.

The review concluded that the benefits of QSuper's monopoly provision of superannuation outweigh the costs, especially for public sector employees, who are the primary stakeholders. The review considered that the effect of the current restriction on competition and the economy generally is negligible. Queensland noted that QSuper accounts for a small proportion of superannuation funds under management in Australia, and that employees leaving the public sector can transfer their superannuation funds to another superannuation provider, and vice versa.

In the 2003 NCP assessment, the Council noted that Queensland's review focused on the cost–benefit calculus for QSuper and its members, rather than on the broader market impact for the provision of superannuation services. In its 2004 NCP annual report to the Council, Queensland has argued that this focus is appropriate because QSuper and its members are the biggest stakeholders. Queensland has also contended that the review report found that the current superannuation arrangements provide members with better retirement income outcomes than would be available under other arrangements, thus satisfying a legislative objective of maximising benefits to members.

In its 2004 NCP annual report to the Council, Queensland has reiterated that:

- any significant transfer of QSuper members to other superannuation funds (if competitive arrangements were introduced) would reduce the financial strength of QSuper and thus the benefits available to members
- given information asymmetry, employees who are given choice may make fund choices that make them worse off

- government agencies would have to make superannuation contributions to a range of funds, thus increasing their costs

- under current arrangements, QSuper members can choose between a defined benefit scheme and four investment options within an accumulation account.

Queensland's public benefit test compared the outcomes of current and alternative arrangements for providing superannuation. The overall net impact of the restriction on members and the wider community is difficult to assess, and the Council has taken the review's conclusions into account.

The Council concludes that Queensland has complied with its CPA clause 5 obligations in this area.

G2 Liquor licensing

Liquor Act 1992

Following completion of a review in 1998, the Queensland Government amended the Liquor Act via the *Liquor Amendment Act 2001*. The amendments:

- replaced the public needs test with a public interest test that focuses on the social, health and community impacts of a licence application rather than the competitive impact on existing licensees

- relaxed the size and location constraints applying to packaged liquor outlets, such that the permitted bottle shop location radius from the main premises is 10 kilometres and the maximum permitted floor area for bottle shops is 150 square metres, in line with NCP review recommendations

- removed quantity limits on club sales of packaged liquor to members, and permitted diners at licensed restaurants to purchase a single bottle of wine for consumption off the restaurant premises.

Queensland retained the requirements that sellers of packaged liquor hold a hotel licence (including the limit on a licence holder to having a maximum of three detached packaged liquor outlets) and provide bar facilities at the site of the hotel licence. Queensland's rationale for retaining these requirements is that:

- the potential harms from alcohol misuse support the concept of a 'specialist provider' model limited to general licence holders

- any loss of revenue from packaged liquor sales by country hotels would have adverse effects on the hotels' viability, to the detriment of the important social role that hotels play in rural areas.

The Council indicated in the 2002 NCP assessment that Queensland's replacement of its needs test with a public interest test is consistent with CPA principles. It considered, however, that Queensland's decision to retain the requirement that only hotel licence holders can operate bottle shops (and the associated restrictions on bottle shop location and numbers) was not justified by the evidence provided in the NCP review or in subsequent correspondence from the Queensland Government.

Queensland's restrictions on packaged liquor sales were considered further in the Council's 2003 NCP assessment. The Council concluded that Queensland had not established a public interest case for its restrictions, noting the absence of similar provisions in other jurisdictions. It also noted, following Victoria's removal of its 8 per cent upper limit on licence holdings, that no jurisdiction other than Queensland has any limit on the number of bottle shops that a licence holder may own.

The Council considers that Queensland's packaged liquor restrictions are significant. They raise the costs of entry into the packaged liquor market for prospective entrants, divert packaged liquor sales to hotels and thereby raise hotel prices, and constrain competition among bottle shops. Further, there is no evidence that the restrictions contribute to harm minimisation.

The Council previously suggested that confining the restriction to rural and regional areas would support rural hotels while enabling urban areas to benefit from greater competition. Queensland maintains, however, that communities on the outskirts of urban centres also rely on local hotels for much of their social interaction and that these communities too could be adversely affected by the reforms.

An alternative approach to reform might utilise a transitional arrangement, phasing in increases in the number of bottleshops permitted with each hotel licence. The Council notes that there has been a low take up of detached bottle shops (less than ten percent of hotel licences have the allowable maximum number of three bottle shops), which suggests that an increase in the maximum could be accomplished without significant disruption to the market. Queensland has rejected this approach, maintaining that it would predominantly assist the major chains at the expense of smaller operators and, to the extent that access to alcohol was increased, would increase alcohol related social harm. As noted, the Council considers that maintaining legislative restrictions to support one class of sellers does not constitute a public benefit.

The Council confirms its 2003 NCP assessment that Queensland has not complied with its CPA obligations in relation to liquor licensing.

H1 Other fair trading legislation

Funeral Benefit Business Act 1982

The Funeral Benefit Business Act regulates the operation of funeral benefit businesses. The NCP review (completed in October 2000) recommended against changing the rights and responsibilities of parties under existing contracts. For any new contracts entered into, or new business conducted, however, the review recommended reforms (summarised in the Council's 2003 NCP assessment) that included:

- the removal of the restriction that only companies may operate funeral benefit businesses
- the removal of the Queensland location requirement for funeral benefit businesses
- the removal of the provisions requiring Office of Fair Trading approval of all advertising
- the removal of the registration requirement.

The Queensland Government responded to the review in April 2003 and accepted all recommendations. The *Second-Hand Dealers and Pawnbrokers Act 2003*, which incorporates the Funeral Benefit Business Act amendments to give effect to the recommendations, was assented to in October 2003.

The Council thus assesses Queensland as having met its CPA clause 5 obligations in relation to the Funeral Benefit Business Act.

H2 Consumer credit legislation

Credit Act 1987

Following completion of its review of the Credit Act, Queensland indicated to the Council that it intended to repeal the Act. However, Queensland subsequently advised that repeal could not occur until litigation in a few existing cases is finalised. The litigation still before the courts stemmed from lenders who breached their obligations under the Act and had to apply to the Supreme Court for re-instatement of their legal right to charge interest under the loan contracts affected by the breaches. The possible outcomes of that litigation were the lenders' reimbursement of interest to affected consumers and/or payment of fines to the Office of Fair Trading. Queensland advised the Council that the last matter was completed in late July 2004. (There was a 28-day appeal period.)

In any case, Queensland officials have informed the Council that the Act ceased to have any practical impact because it has been eight years since any loans have been subject to the Act.

Given that the legislation has no practical effect, and that the outstanding litigation under the Act has been finalised, the Council assesses Queensland as having met its CPA obligations in relation to this Act.

H3 Trade measurement legislation

Trade Measurement Act 1990

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

Because the national review and reform of trade measurement legislation has not been completed (see chapter 19), Queensland has yet to meet its CPA obligations in relation to trade measurement legislation.

I1 Education

Grammar Schools Act 1975

A NCP review of the Grammar Schools Act was completed in September 1997. A second NCP review was completed in June 2002 and recommended removing the minimum financial requirement for the establishment of a grammar school. A third, and wider, review of the Act, to consider the impact of other legislation for the accreditation of non-state schools and the financial administration of grammar schools, was completed in March 2003. The Act was amended in late 2003 by the *Grammar Schools and Other Legislation Amendment Act 2003,* which implements the recommendations of both the NCP and wider reviews.

The Council assesses Queensland as having met its CPA obligations in this area.

I2 Child care

Child Care Act 1991
Child Care (Child Care Centres) Regulation 1991
Child Care (Family Day Care) Regulation 1991

A major review of Queensland's child care legislation and its NCP implications began in 1999 and was completed in May 2002. The review examined the impact of licensing fees and the costs of meeting licensing requirements. These costs arise from the requirements to employ qualified staff and meet building and facility standards. The review also examined the impact of regulating previously unregulated service types within the child care sector.

The government endorsed the review in June 2002. The review recommended the adoption of the regulatory tiering framework proposed for the regulation of child care in Queensland. As a result, the *Child Care Act 2002* and the Child Care Regulation 2003 commenced operation on 1 September 2003.

The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

I3 Gambling

Wagering Act 1998

Queensland's omnibus review of gambling regulation included a review of the Wagering Act, which grants an exclusive licence to UNiTAB until 2013. The review report was released in December 2003 and argued that the exclusive licence is necessary to ensure the viability of the state's racing industry and that removing the licence would signal that the government is encouraging a proliferation of gambling opportunities. The Council does not accept these arguments: the 1999 Productivity Commission inquiry into Australia's gambling industries identified alternative methods to fund racing, and totalisator branches are already widespread. However, the review also found that the government faces significant compensation costs if the exclusivity were to be revoked before its expiry, and the Council acknowledges that these costs are likely to outweigh the benefits from such an action. The government has endorsed the review findings, and no change to the Wagering Act is required.

The Council assesses Queensland as having complied with its CPA obligations in relation to totalisator wagering.

Gaming Machine Act 1991

Queensland reviewed its Gaming Machine Act as part of its omnibus gambling review completed in December 2003. The review report examined venue caps (280 for licensed clubs and 40 for hotels), noting that machine numbers in hotels had risen from 4963 in June 1997 to 13 360 in June 2000 as the venue cap was increased. Over the same period, machine numbers in licensed clubs had increased from 16 079 to 18 360. The review concluded that applying the same cap to hotels as to clubs would lead to further growth in machine numbers and associated harm. For the same reasons, it supported the statewide cap on hotel (but not club) gaming machines. The review also supported the higher cap for clubs on the grounds that the revenue raised from gaming machines in clubs is used to fund community facilities and activities.

The Council does not accept that promoting the club industry via differential caps is the only way in which to provide community facilities. However, it recognises that increasing the hotel and statewide caps would add considerably to the number of machines in operation with some potential for increased harm (although this potential may be exaggerated because gamblers already have easy access to gaming machines). The Council notes the review finding that few clubs operate the maximum number of gaming machines, implying that there may be scope to reduce the club cap. For the present, however, the Council accepts Queensland's position in regard to the proliferation of gambling opportunities that might result from increasing the number of hotel gaming machines.

Each club and hotel in Queensland is required to enter into an agreement with a licensed monitoring operator. The operators ensure the integrity of each gaming machine and supply the government with financial information from each machine. They also supply new and used machines, ancillary gaming equipment and other services, including maintenance. Currently, there are four licensed monitoring operators, and each is restricted under the terms of its licence to a maximum of 40 per cent of total market share. The review examined the 40 per cent limit, finding that the provision ensures Queensland has more competitors in the market than do other jurisdictions. While acknowledging arguments for lifting the restriction on market share, the review found that the current arrangements appear to be working well and that, on balance, it would not be in the public interest to remove the restriction. The review's finding appears to reverse the onus of proof in the CPA obligations, particularly given that the review also noted that the restriction may not be necessary given this is a market in which experienced operators use well tested systems.

The market sharing arrangement is not related to issues of probity and as such does not appear to be underpinned by any reasonable objective.

As the government has endorsed the review the Council assesses Queensland as not meeting its CPA obligations in relation to the monitoring operators' cap for gaming machines. The Council notes that the Gaming Commission, which

administers machine operator licences, is currently considering an application for removal of the 40 per cent limit. The Government has indicated it has no objection to this change, nor have the existing licensed machine operators which were consulted along with other stakeholders on this issue.

Interactive Gambling (Player Protection) Act 1998

Queensland's Interactive Gaming (Player Protection) Act establishes criteria for licensing interactive gaming suppliers, and controls all forms of interactive gambling in Queensland. The Australian Government subsequently enacted its legislation; as a result, the only operator licensed under Queensland's legislation surrendered its licence on 1 October 2001. No further licences have been issued. Queensland considered the Act as part of its omnibus review of gambling legislation. The review recommended that the current licensing restrictions be retained because they are in the public interest. The government endorsed that recommendation, and the Act has been retained without change.

Queensland has completed its review and reform of the Interactive Gaming (Player Protection) Act, so the Council assesses it as having complied with its CPA obligations in this area.

Keno Act 1996
Charitable and Non-profit Gambling Act 1999

Queensland considered the Keno Act and the Charitable and Non-profit Gambling Act in its omnibus gambling legislation review, which released its report in December 2003. Currently, Jupiter's Gaming Pty Ltd has an exclusive licence to provide keno until 2007. The review supported the exclusive licence as being necessary to permit the operator to develop short term and medium term viability, given the costs of establishing keno operations. The report noted that the government would have to pay compensation if it revoked exclusivity, and that the government could consider issuing a second licence after 2007.

Charitable and nonprofit gaming is regulated in four categories to ensure probity; in most cases, a licence is not required.

The government endorsed the review findings, and no legislative change is required for keno or other minor forms of gambling.

The Council previously indicated that it accepts that the cost of compensating licence holders for the early removal of licence exclusivity is likely to outweigh the benefits of such an action. The Council thus assesses Queensland as meeting its CPA obligations in relation to minor gambling.

J3 Building occupations

Surveyors Act 1977

Queensland completed a review of the Surveyors Act in 1997. The review supported retaining the licensing system for cadastral surveyors, arguing that the system helps to maintain the stability and integrity of the land title arrangements. It recommended, however, removing a number of restrictions on competition — namely, business name approval, the setting of surveyors' fees by the Surveyors Board of Queensland (a provision that had not been used for many years), and the requirement that the majority of directors of bodies corporate must be registered surveyors. The government endorsed the review recommendations.

Following consultation, the government introduced the Surveyors Bill 2003 to Parliament on 27 May 2003. When the Council finalised the 2003 NCP assessment, Parliament had not completed its consideration of the Bill, and the Council concluded that review and reform activity was incomplete.

The legislation was enacted (with minor amendment) late in 2003. The Act retained the existing model for regulating surveyors, and removed the three restrictions that the NCP review did not support. A proclamation commencing the Act was made on 16 July 2004. The Surveyors Regulation 2004 was also gazetted on that date, taking effect on 1 August 2004. This Regulation sets out the charges that apply when surveyors seek to be registered with the Surveyors Board of Queensland, and the professional indemnity insurance requirements that surveyors must fulfil for registration.

The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

14 Western Australia

A1 Agricultural commodities

Marketing of Eggs Act 1945

In 2003 the National Competition Council assessed that Western Australia had not met its Competition Principles Agreement (CPA) clause 5 obligations arising from the Marketing of Eggs Act because the government, while it had announced its intention to remove restrictions on competition in the supply and marketing of eggs by July 2007, had not demonstrated the public interest in delaying reform to this date.

On 3 June 2004 the government introduced the Marketing of Eggs Amendment Bill 2004 into Parliament. The Bill provided for the expiry of the Act and the dissolution of the Western Australian Egg Marketing Board on or before 31 December 2005, and the transfer of the board's assets to a producer-owned egg marketing company based on co-operative principles. The Bill was passed by Parliament on 19 August 2004. The government has also announced that it has allocated $8.75 million to assist egg producers to adjust to the removal of egg supply licensing and quotas.

The Council assesses that Western Australia has now fulfilled its CPA clause 5 obligations arising from the Marketing of Eggs Act because it is satisfied that the legislative reforms represent a firm transitional arrangement, and that this arrangement is justified by the need to complete structural reform and to allow producers time to plan for the new competitive market.

Grain Marketing Act 1975

In its 2003 NCP assessment, the Council concluded that Western Australia had yet to fulfil its CPA clause 5 obligations because the review and reform of the monopoly on the export of barley, canola and lupins were incomplete. Replacing the 1975 Act, new legislation, the *Grain Marketing Act 2002*:

- granted Grain Pool Pty Ltd (GPPL) the main export licence to export barley, canola and lupins in bulk
- established a system of special export licences, administered by a Grain Licensing Authority, for the bulk export of barley, canola and lupins by parties other than GPPL where this will not significantly impact on price premiums that GPPL captures through the exercise of market power

- removed all restrictions on the export of these grains in bags and containers, and on the export of processed grains.

The government had also appointed the members of the authority. However, it was still to issue the regulations and guidelines provided for by the new Act. The Council considered these regulations and guidelines important for maximising confidence amongst growers, traders and customers in the predictability of the licensing regime through ensuring that, as agreed between the government and the Council in August 2002, the authority would:

- be predisposed to grant export licences to parties other than GPPL unless satisfied that this would have a significant impact on a price premium arising from the market power of the single desk

- obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power of the single desk.

The government released new regulations and guidelines in September 2003, soon after completion of the 2003 NCP assessment. The regulations set down the fees payable by holders of export licences. The guidelines address issues such as the definition of a market power related premium, the matters that it might consider when assessing the effect of a proposed export on the state's reputation as a grain exporter and on the state's grain industry generally, and the matters that the authority is to report on to the Minister. The latter includes an assessment of the existence and extent of price premiums resulting from the market power of the single desk.

On the central issue of predisposition to grant licences the Council found the guidelines left considerable uncertainty about how the authority would decide:

- which grain export markets returned market power-related premiums to GPPL and whether a proposed export would affect any such premiums to a significant extent, as the authority is required to decide by s31(2) and (3) of the Act

- if a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally, as the authority is required to decide by s31(4) of the Act.

The Council communicated its view to the Minister for Agriculture in October 2003, noting that, as a consequence, it would need to scrutinise the performance of the authority in its first season of operation.

The authority began its task of considering applications for special export licences in September 2003. In its first season of operation, it licensed the export to the Middle East of 433 000 tonnes of feed barley, of which 339 736 tonnes were shipped, representing approximately 17 per cent of Western

Australia's average barley production. It also licensed the export of smaller tonnages of malting barley[1], canola and lupins, although no grain was shipped under these licences. The authority declined applications to export 318 000 tonnes of feed barley to the Middle East and 85 000 tonnes of canola to Asia and the Indian subcontinent. Two licence applications were appealed to the Minister for Agriculture who granted one of these.

The authority commissioned agribusiness analysts Farm Horizons to independently assess the existence and extent of premiums arising from the exercise of market power. Farm Horizons examined 15 markets identified by GPPL as 'core' to its business but found only one — the Japanese barley market — was likely to allow GPPL to exercise market power, and the price premiums observed in this market could reflect additional servicing costs. It also found that Western Australian cash grain prices were consistently lower than Victorian prices, even though Western Australia has a port charge and shipping cost advantage.

In June 2004 the authority reported to the Minister on its operations for the 2003-04 season (GLA 2004). The authority noted, according to submissions it had received, that just over 700 growers had sold grain to exporters other than GPPL, representing more than 10 per cent of growers. It also noted the difficulty of showing price premiums from the exercise of market power but, nevertheless, expressed disappointment at the lack of evidence provided by GPPL to substantiate its claims that it captures such premiums in a large number of markets. The authority foreshadowed for the 2004-05 season that it would initially take a cautious approach to licensing until it had a firmer idea of the likely crop size, but thereafter would take a more liberal view, now that it has a better understanding of grain markets. It recommended that the Minister retain the Act and Ministerial guidelines without amendment, but amend the regulations to reduce application fees. It also recommended that the Minister not consider new information when deciding appeals against its decisions. The Minister has indicated he intends to review the licensing arrangements in 2004.

The authority is now issuing licences for the 2004-05 season following an initial delay while it firmed its view on the likely size of this crop. As at October 2004, the authority has licensed the export of 385 000 tonnes of feed barley, which represents around 25 per cent of the expected Western Australian crop. In addition it has rolled over a 2003-04 malting barley export licence into 2004-05, bringing total barley export licences to 420 000 tonnes for the 2004-05 season so far. This compares with 433 000 tonnes licensed for the 2003-04 season which represented around 15 per cent of that season's crop. This season it has also licensed the export of 38 000 tonnes of canola and 60 000 tonnes of lupins (via appeal to the Minister). The authority has declined applications to export 150 000 tonnes of feed barley to the Middle East, 65 000 tonnes of malting barley to Asia and 50 000 tonnes of canola to the subcontinent.

[1] Licence granted on appeal to the Minister.

The issue of special export licences by the authority has brought a very significant degree of additional competition to the grain accumulation market in Western Australia. The National Farmers Federation (NFF) estimates this competition added $3.5–6.0 million to the state's rural economy, in particular through cash prices for feed barley increasing by $10 to $15 per tonne following the issue of licences (NFF 2004). The NFF has observed other benefits from the entry of grain traders and a more competitive cash market such as allowing growers to reduce their pricing risk and borrowing exposure. It foresees that a more liquid cash market will bring new forward contracting options for farmers. At the same time the pools operated by GPPL have remained available and continue to be strongly supported by farmers.

Yet it is also clear that special export licences have been denied or delayed where, according to the Farm Horizons assessment, it is unlikely that market power-related price premiums exist to be threatened. The authority has interpreted s31(4) of the Act — which requires it to consider the effect of granting a licence on the state's reputation as a grain exporter and the effect on the grain industry generally — to include concern for the ability of GPPL to source sufficient grain to meet the requirements of its core customers. For instance, in its report to the Minister it noted:

> *Because of the large crop following a series of smaller crops, and hence lower export availabilities of the previous four years from 1998/99 to 2001/02, the GLA took the view that there was scope for significant volume to be sold through special export licences without impacting on the marketing strategies of the GPPL. However the GLA is mindful that crop size will have a large bearing on the quantity which can be exported outside the pooling system without having an adverse impact on the GPPL being able to service core markets.* (GLA 2004, p. 6)

This strongly implies that, had the 2003-04 crop been lower than average, the authority would have licensed a much smaller volume of exports by parties other than GPPL.

In essence the authority is claiming that, in low crop seasons, the state's reputation as a grain exporter, or the grain industry generally (a relevant consideration under s31(4) of the Act), may be harmed if competition left GPPL with insufficient grain to supply its regular customers.

The Council is not convinced by this claim. Certainly, consistency of supply is important to some grain customers, some of whom may respond to reduced supply from GPPL by switching some or their entire requirement to other suppliers. However, the authority has not explained why GPPL cannot compete to obtain sufficient grain from WA growers. Indeed former statutory monopoly marketing boards generally continue to enjoy strong grower support following the lowering of barriers to competitive entry. Moreover, GPPL can acquire grain from growers outside of Western Australia, for instance via its marketing joint ventures with ABB Grain Ltd and with Elders.

The net benefits of the export licensing arrangements are likely to be improved by exposing GPPL to more competition in the grain accumulation market. This will improve the ability of grain exporters to offer growers financing and risk management options that better meet their diverse preferences, and to win export orders against foreign suppliers in markets where GPPL is unlikely to earn a premium from the exercise of market power.

Nevertheless the advent of Western Australia's grain export licensing arrangements represents a very important milestone in the development of Australia's grain industry. Western Australia accounts for over one quarter of Australian barley production and around one third of barley exports. Export marketing restrictions have been removed or reduced earlier in Victoria, Queensland and New South Wales — however exports take a much lower share of these states' crops. Moreover, having decided in favour of change, the Western Australian Government has actually implemented it in a relatively short space of time, refusing to back down in the face of opposition from vested interests. Not all governments have demonstrated such a clear commitment to the reform in the public interest of agricultural marketing monopolies.

The Council also recognises that, in the early days of such an important change for the Western Australian grain industry, the authority needed to be cautious. Now that the authority has the benefit of experience from its first complete season of operation, and the analysis prepared by Farm Horizons, it is in a position to license grain exports more readily. The Council welcomes recent signs that the authority is moving in this direction.

Another change that is likely to make an important difference to competition is to make the licensing process more predictable through amending the Ministerial guidelines to specify more clearly the kind of circumstances relevant to s31(4) of the Act. For example:

- where a licence applicant has been found to have misrepresented the quality of grain exported
- where a licence applicant has previously failed to honour payment obligations to growers
- where a licence applicant has previously sold grain in one market knowing that it would be transhipped to another market for which it did not have an export licence.

The Minister has commissioned a review of the Grain Marketing Act and the authority by national accounting and business advisory firm RSM Bird Cameron. This review is due to report by the end of December 2004, and has been asked to comment on the costs and benefits of the Act and on how it could be improved to enhance the benefit to the Western Australian grains industry.

In these circumstances the Council has decided to finalise its assessment in 2005. Western Australia will have met its obligations arising from the grain exporting licensing arrangements when it has amended the Ministerial guidelines to improve the predictability of the export licensing arrangements. In particular the Council believes these should:

- set out clear and specific criteria that the authority should use to decide:
  - which grain export markets return market power-related premiums to GPPL and whether a proposed export would affect any such premiums to a significant extent (under s31(2) and (3) of the Act)
  - if a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally (under s31(4) of the Act)
- state that the government expects the authority will not withhold special export licences unless these criteria are met.

Marketing of Potatoes Act 1946

In 2003 the Council assessed that Western Australia had not met its CPA clause 5 obligations relating to the Marketing of Potatoes Act, which regulates the supply of potatoes grown in the state for fresh consumption and fixes their wholesale price. The 2003 review by the Department of Agriculture, in finding that evidence for the net public benefit was inconclusive, reversed the presumption required by the CPA clause 5 (that is the presumption that legislation should not restrict competition unless this is in the public interest). It also failed to adequately demonstrate that the supply management and price-fixing powers of the Potato Marketing Corporation are in the public interest.

In August 2003 the government decided to retain the regulation of supply management and price fixing regulation. Shortly afterwards, the Minister established an advisory group to consider the regulatory arrangements and recommend changes to improve their efficiency. In July 2004 the Minister announced that the government would introduce amendments to the Act to Parliament next year, to:

- change the basis of supply restrictions from licensed growing area to quantity
- introduce incentives for growers to supply varieties preferred by consumers
- devolve from the Minister to the corporation the regulatory functions of setting aggregate supply and fixing wholesale prices
- transfer the commercial functions of marketing, promotion and exporting to a grower-owned entity.

The Minister said the changes would 'improve the effectiveness of the Potato Marketing Act without fundamentally altering the regulation of domestic potato supply' and that 'continued statutory marketing for potatoes would maintain industry stability in regional areas' (Chance 2004).

As the Minister has acknowledged, the proposed changes will not remove the restrictions on competition imposed by the Act, but should reduce the costs to the community of these restrictions, particularly by improving the availability of lower yielding potato varieties preferred by consumers, and by reducing the incentives on growers to maximise area yield through the application of higher fertiliser and other inputs. Nevertheless, the government has not presented convincing new evidence that the restrictions bring benefits to the community that outweigh the costs, or that the objectives of the legislation can be achieved only by restricting competition.

Since the 2003 NCP assessment, the government has argued that a retail price survey commissioned by the Potato Marketing Corporation shows that Western Australian consumers enjoy cheaper potatoes than consumers in other states and, therefore, that the legislative restrictions are in the public interest. The difficulty with such surveys is that they shed little light on what prices consumers would face, or how quality and product choice would change to meet consumer preferences, without the restrictions at issue. For instance, the retail price survey reveals nothing about whether, without the restrictions, Perth prices for most desired table potato varieties would track equivalent prices in Sydney or Melbourne, or the often significantly lower Adelaide prices, or somewhere in between.

As acknowledged by the NCP review, the restrictions may increase prices paid by Western Australian consumers. According to the review:

> … *the PMC sets its operational objective and performance indicator to meet 95 per cent of domestic demand, as described in its last two annual reports. The remaining market demand is met by imports not regulated in the Act. The PMC could be seen to be using the supply controls in the Act to achieve as close as possible to import parity prices.* (Government of Western Australia 2002, p. 6)

In other words, without the legislative restrictions, the volume (and range) of Western Australian grown potatoes supplied to consumers (in Western Australia and elsewhere) is likely to increase, bringing wholesale and retail prices down, and displacing potatoes from South Australia and, to some extent perhaps, substitute foods.

The Council thus finds that Western Australia has not met its CPA clause 5 obligations arising from the Marketing of Potatoes Act. To meet these obligations the government must remove the supply and marketing controls. Such reform could include a phased transition to help reduce the adjustment costs that existing growers might face.

Chicken Meat Industry Act 1977

Western Australia's Chicken Meat Industry Act 1977 established a central industry committee of grower, processor and independent members, and empowered the committee to set a standard growing price, approve the establishment of growing facilities and determine disputes between growers and processors. The Act also prohibited the establishment of new processing facilities without the approval of the Minister. Regulations made under the Act prescribed a standard growing agreement and gave incumbent growers first right of refusal to meet growing capacity increases sought by processors. The Act contained no statutory exemption from the anticompetitive conduct provisions of the *Trade Practices Act 1974*.

In 2003 the Council assessed that Western Australia had not yet met its CPA clause 5 obligation relating to the Chicken Meat Industry Act because the government had yet to make recommended reforms to the Act's restrictions on competition.

The Department of Agriculture reviewed the Act in 1997. This review recommended:

- retaining the industry committee's power to set a standard growing fee, subject to:
  - allowing growers to opt out of collective bargaining
  - further reviewing this power in five years
- removing controls on entry to the processing and growing sectors, subject to specifying environmental, health and animal welfare standards for the approval of growing premises.

The Act was amended in December 2003 by the *Acts Amendment and Repeal (Competition Policy) Act 2003*, and the amendments were proclaimed in May 2004. As a result, the growing agreement prescribed by Regulation, together with the standard growing fee and the committee's dispute resolution power, apply only where growers and their processor agree. That is, individual growers and their processor may opt out of the statutory centralised bargaining and dispute resolution process. Collective bargaining by growers, whether under the Act or otherwise, remains subject to the Trade Practices Act. There are also now no restrictions on entry to the processing sector.

The government is yet to develop new standards for growing premises. No significantly restrictive criteria are expected to be imposed, and there are avenues, including appeal to the Minister under the Act, for a grower who is aggrieved by a refusal to approve growing premises.

As recommended by the review, the government has retained the requirement that incumbent growers have first right of refusal to meet growing capacity increases sought by processors. This is potentially an important restriction on the opportunity for new growers to enter the Western Australian industry.

The government has argued that the restriction benefits the community by allowing for the development of a more efficient industry structure, evident in the highest average farm size nationally and the concentration of efficient growers in closer proximity to their processors. Generally, barriers to market entry lead to lower rather than higher production efficiency, and the government has not shown why the chicken meat growing industry is special. Nevertheless, the Council believes the first right of refusal provision does not ultimately restrict entry into chicken growing because processors are free to not renew contracts with any existing grower (or, subject to contractual rights and obligations, to terminate a contract), and to contract with a new grower entrant to maintain growing capacity.

The Council thus assesses that Western Australia has met its CPA clause 5 obligations arising from the Chicken Meat Industry Act.

A3 Fisheries

Fish Resources Management Act 1994

In the 2003 NCP assessment, the Council found that Western Australia had completed the review of the Fish Resources Management Act but had retained some restrictions on competition without adequately demonstrating the public interest in these restrictions. The key outstanding matters were:

- input based controls on the rock lobster fishery — an NCP review of fishery regulation recommended the government commission an independent update of earlier work on the net benefits of moving to an output based management regime and, in the interim, remove minimum limits on pot holdings and separate pot licensing from boat licensing

- a limit on the number of rock lobster export processing licences — an NCP review of the processing sector recommended the removal of this restriction

- a limit on the number of aquatic tour licences — an NCP review of aquatic tour regulation recommended the government retain this restriction, because a cautious management approach is required until scientific analysis of the industry's impact on the fishery is available, but the Council found that the review did not adequately consider less restrictive alternative measures to meet the objectives of the regulation.

Following the 2003 assessment, the government, via the Rock Lobster Industry Advisory Committee, engaged a consultant to review how the rock lobster fishery should best be managed in future. This review, including consultation with industry, is expected to be completed in late 2006.

The government also decided to remove from the fishing tour operators licensing regime the requirement that applicants for new licences have a prior history and commitment to the industry. Instead applicants for new

licences will only need to show that they will either service an area not serviced by an existing operator, or target fish stock not currently fully exploited.

The Council assesses that Western Australia is still to completely fulfil its CPA clause 5 obligations arising from the Fish Resources Management Act. The key matters outstanding are:

- input based (pot unit entitlements) restrictions in the rock lobster fishery
- a limit on the number of licences authorising export processing of rock lobsters.

In relation to the rock lobster fishery, the government has argued that moving to less restrictive output based controls, such as an individual transferable catch quota, could lead to a substantial increase in enforcement costs. It notes that the fishery is spread over a very long coastline, and that voluntary compliance with fishery controls may fall if a significant portion of the industry does not support change. The review program for the fishery includes extensive consultation with fishers and other parties about the outcome of an independent analysis of alternative management approaches.

The Council supports careful analysis and wide consultation in the review of regulation. Nevertheless, the government has not shown, either by the revised Council of Australian Governments (CoAG) deadline or since, that a less restrictive alternative to the existing controls (such as an individual transferable quota) would not achieve the objectives of the legislation. For this reason, it has not met its CPA clause 5 obligations arising from input based restrictions on the rock lobster fishery.

In relation to rock lobster processing, the government has argued that removing the limit on the number of licences authorising export processing would increase enforcement costs and could harm the Western Australian rock lobster's export reputation for high quality. The Council does not find these arguments convincing, however. First, the government recovers its enforcement costs from operators, so if marginal enforcement costs are signalled to operators, existing and potential operators are likely to make the most efficient decisions about investing in export processing facilities. Second, there are less restrictive alternatives for protecting product quality and reputation, such as accreditation schemes and product branding.

The government has also argued that the export processing sector is already very competitive. This suggests that the net cost of the restriction may not be large, but does not justify restricting competition.

In relation to the licensing of aquatic tour operators the Council accepts that, with the removal of the need for applicants to demonstrate a prior involvement in the industry, the remaining restrictions are in the public interest.

Western Australia will have met its CPA clause 5 obligations arising from the Fish Resources Management Act when it has:

- removed the limit on the number of licences authorising the export processing of rock lobsters
- announced, following completion of the current review, a firm timetable to implement output based management of the rock lobster fishery, or demonstrated that the existing input based approach is in the public interest.

Pearling Act 1990

In the 2003 NCP assessment, the Council found that Western Australia had completed the review of the Pearling Act but was yet to remove several restrictions on competition as recommended, including:

- minimum limits on holdings of pearling quota
- the coupling of pearl farming licences and pearl fishing licences
- limits on the volume of hatchery-produced pearl oysters allowed to be seeded (a hatchery quota).

The government intends to replace the Act with new legislation but such a Bill is now not expected to be introduced until autumn 2005.

The government policy has been to retain the hatchery quota rather than remove it as recommended by the review. The government is committed to a review of the pearl oyster hatchery policy before its expiry in December 2005. Via this review, it aims to develop a strategy for increasing quota in response to demand pressure and the success of market differentiation programs (such as a proposed Australian appellation and certification program), and for allocating such quota increases (such as through auctions).

The 1999 review (by the Centre for International Economics) recommended removing the hatchery quota because it found that the case for restricting pearl production via a hatchery quota is highly uncertain, although it did not identify clear and significant gains from the quota's removal.

The government has argued that retaining the hatchery quota is an appropriate precautionary response, given that the NCP review found no strong case either way and that a Pearl Producers Association submission to the review gave evidence of a significant net benefit to the community (up to $21 million per year) from retaining the quota. According to the government, the NCP review erred in dismissing the case made in the submission (including the results of a market research study) without producing contrary evidence.

Australian pearls vary from high quality, for which there is limited foreign competition, to lower quality (about 33 per cent), which compete with supply from Indonesia and the Philippines. Prices have fallen relatively more for lower quality pearls than higher quality pearls. However, there are some constraints on further growth in Indonesian and Philippine supply.

The government has argued that the hatchery quota drives the industry to produce higher quality product and supports prices by promoting confidence in the pearl marketing chain that the market will not be flooded. It has further argued that if the quota were removed, Australian producers might increase volume at the expense of quality, even though they would have difficulty competing with lower cost overseas suppliers of lower quality pearls.

The Council acknowledges the uncertainty that surrounds this issue, but remains unconvinced that the government's response is appropriate in the circumstances. The NCP review carefully considered the submission of the Pearl Producers Association. In addition, the reviewer subsequently provided further analysis to the Department of Fisheries highlighting important sources of doubt concerning the net benefit model employed in the submission. In NCP reviews, where a net public benefit from restricting competition has not been established with reasonable certainty, the NCP presumption in favour of competition obliges governments to remove the restriction.

Moreover, an appellation/certification program as proposed by the government may be a less restrictive alternative to a hatchery quota for protecting the quality and reputation of Australian pearls. Such a program could promote the confidence of consumers (and others in the marketing chain) in the continued rarity of high quality Australian pearls, and thereby protect the pricing power of producers, while allowing the expansion of Australian production of lower quality pearls (for which foreign-produced pearls are close substitutes) unrestricted by a hatchery quota.

The Council assesses that Western Australia has not met its CPA clause 5 obligations arising from the Pearling Act as the legislation continues to impose competitive restrictions that have not been shown to be in the public interest and, while the government intends to remove most of these restrictions, it has refused to remove hatchery quota. The government will have met its obligations when it has removed all restrictions on competition not clearly shown to be in the public interest.

A4 Forestry

Sandalwood Act 1929

Sandalwood is a slow growing native tree that is valued for its aromatic qualities. Most sandalwood is exported to Asian markets as logs that are powdered and used to make incense sticks and ornamental works. The

Sandalwood Act controls the harvesting of sandalwood other than from plantations. Most sandalwood occurs on Crown land in the vast inland rangelands of the state. Around 1.5 per cent of the natural resource is privately owned, and this is concentrated in remnants of native vegetation in the relatively highly developed south west region.

The review of the Act, completed in November 1997, recommended removing the 10 per cent cap on the amount of sandalwood that can be harvested from private land, but retaining total harvest quotas and the licensing of sandalwood harvesters.

In its 2003 NCP assessment the Council found that Western Australia had not met its CPA clause 5 obligations related to the Act because it had not:

- removed, as recommended by the NCP review of the Act, the 10 per cent cap on the harvesting of private sandalwood
- adequately demonstrated the public interest in restricting sandalwood harvesting from private land (via the limit on the total volume of sandalwood that may be harvested from public and private land in any given period, and via licensing).

The *Acts Amendment and Repeal (Competition Policy) Act 2003*, which was passed in December 2003 and proclaimed in May 2004, amended the Act to remove the 10 per cent cap.

Further, the Council now accepts, having considered further information from Western Australia, that using licensing to restrict the harvesting of native sandalwood on private land is in the public interest, most importantly to conserve remnant biodiversity in extensively cleared landscapes.

However, although the review did not recommend removing the limit on the total volume of sandalwood that the industry may harvest, the Council continues to have some reservations that this limit is necessary to achieve the objective of biodiversity conservation and sustainable resource use. The case made for removing the 10 per cent cap on harvesting of private sandalwood — that such objectives can be equally or better achieved by applying other provisions of the legislation and Regulations relating to quantities and areas that can be harvested under individual licences — appears equally applicable to the limit on the total volume of sandalwood harvested. It is arguable, therefore, whether a statewide harvest limit effectively achieves biodiversity conservation and sustainable resource use where these objectives are threatened more in some areas than in others.

Notwithstanding these reservations about whether the review adequately demonstrated the public interest in limiting the total volume of sandalwood that may be harvested, the Council assesses that Western Australia has met its CPA clause 5 obligations arising from the Sandalwood Act.

A5 Agricultural and veterinary chemicals

Agriculture and Veterinary Chemicals (Western Australia) Act 1995

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of these chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Western Australian legislation is the Agricultural and Veterinary Chemicals (Western Australia) Act.

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed and the Council thus assesses that Western Australia has not met its CPA obligations in relation to this legislation.

Aerial Spraying Control Act 1966
Agricultural Produce (Chemical Residues) Act 1983
Veterinary Preparation and Animal Feeding Stuffs Act 1976

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

A national review examined 'control of use' legislation for agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. Western Australia will implement the review recommendations through amendments to its legislation. The Agricultural Management Bill is being drafted, and the Veterinary Preparations and the Animal Feeding Stuffs Amendment Bill 2003 was introduced to Parliament in 2003 but had yet to pass at the time of this assessment.

Because Western Australia has yet to implement reforms, the Council assesses it as not having met its CPA obligations in this area.

A6 Food

Health Act 1911
Health (Food Hygiene) Regulations 1993
Health (Game Meat) Regulations 1992

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. The National Food Standards Code (including the food safety standards contained in chapter 3 of the code) was adopted in Western Australia by the Health (ANZ Food Standards Code Adoption) Regulations 2001. In 2004 Western Australia will finalise reform of its food legislation with the passage of a new Food Bill, which will replace the relevant part of its Health Act. Western Australia intends to repeal all of its food hygiene Regulations.

Because Western Australia has not completed its reforms, the Council assesses it as not having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1960

The Western Australian Government endorsed a review of its Veterinary Surgeons Act in December 2001. The major review recommendations included:

- repealing the restrictions on ownership of veterinary practices by nonveterinarians
- introducing a competency based licensing category known as 'veterinary service provider' to reduce the barriers to entry for nonveterinarians wishing to provide veterinary services
- repealing the advertising provisions and replacing them with voluntary guidelines or a code of conduct
- repealing the restrictive aspects of the premises registration provisions and replacing them with a voluntary code of practice

The recommendations, along with other changes that are not NCP related, will be implemented through a specific amendment Bill. Drafting of the Bill is yet to commence. The Council thus assesses Western Australia as not having met its CPA obligations for veterinary surgeons.

B1 Taxis and hire cars

Taxi Act 1994

The Taxi Act allows the Western Australian Director-General of Transport to prescribe the number of taxi licences by area. The NCP review of the Western Australian taxi industry was completed in August 1999. It recommended removing restrictions on taxi licence numbers, while retaining maximum fares (for a transitional period) and safety and vehicle standards. The government put 25 wheelchair-accessible taxi licences and 100 peak period licences to tender in early 2000. The peak period licences were only for Friday and Saturday nights and for vehicles that could carry six passengers or more. These conditions discouraged the uptake of the licences, with only 35 being issued following the tender.

In July 2003 the government announced reforms that involve leasing around 50 new taxi plates in Perth in the first year and a smaller number of new plates in following years. The 2003 NCP assessment noted this announcement and commented that Western Australia had made some progress towards taxi reform, but concluded that review and reform activity was incomplete.

Parliament passed the Taxi Amendment Bill 2003 on 3 December 2003. In relation to this legislation, the Minister (MacTiernan 2003) noted that the government would release 48 new plates following the closure of applications on 16 January 2004, comprising 32 conventional taxis with a lease cost of $250 per week (compared with a market lease rate of around $345 per week), four multipurpose taxis leased at $100 per week, and 12 peak period plates leased at $50 per week.[2] The 32 full time plates were released in April 2004, with the Minister observing that these plates were the 'first new full-time plates released for 14 years' (MacTiernan 2004b).

The 48 new taxi plates released in the first half of 2004 are equivalent to around 4 per cent of the total number of plates in Perth. The Minister announced on 10 June 2004 that the government will release an additional 28 plates before Christmas 2004 (these plates have since been tendered), and then an additional 40 new plates in each year from 2005 to 2008. The 40 additional plates each year will comprise 12 multipurpose taxi plates and 28 conventional and peak period plates. These plates will be leased on a basis similar to that of the autumn 2004 release, with the lease price being significantly below the market lease price. The multipurpose plates will continue to be leased at $100 per week. Potential lessees for new taxi plates will be asked to make tender bids, with the tender criteria relating to the

[2] The Minister noted that there were 1113 taxis in total in the Perth metropolitan area, comprising 924 conventional taxis, 81 multipurpose taxis, 100 peak period taxis and eight area restricted taxis (MacTiernan 2004a).

quality of driver and service. The government also intends to conduct a review of this five-year plan before its conclusion.

Western Australia does not restrict hire car licences, but operators can accept bookings of only at least an hour, and the detention rate is substantially higher than for taxis.

The announced program of taxi licence releases to 2008 represents significant progress that equates to around a 3.5 per cent annual growth in the fleet's size. The program does not commit Western Australia to ongoing increases in taxi numbers beyond 2008, or to any interim action if the demand/supply imbalance does not improve (see chapter 9). However, while the government does not appear to intend to continue taxi releases until the demand for plates is met fully, it has announced a review of the efficacy of the new arrangements before their expiry.

The Council's relatively low compliance benchmark for taxi reform was established by the positive assessment afforded Victoria in the 2003 NCP assessment. That assessment recognised substantial forward progress in an area in which there was little, if any, will for reform across Australia. While the Victorian regime involves a longer term commitment to de-restricting entry to the industry, the Western Australian program is of a similar ilk. For procedural fairness, the relatively low compliance benchmark established for Victoria suggests that Western Australia's program is sufficient for it to be assessed as (marginally) meeting its CPA obligations. Nevertheless, the achievement of this lower benchmark should be viewed as an interim step toward fully meeting the public interest objectives established by NCP reviews.

B3 Dangerous goods

Explosives and Dangerous Goods Act 1961

The 1998 review of this Act recommended aligning the licensing requirements for the manufacture of explosives with those for other hazardous chemicals, replacing the inspection and licensing arrangements for vehicles used to transport explosives with the system used for vehicles carrying other dangerous goods, and encouraging industry responsibility for health and safety matters relating to the storage of explosives and other dangerous goods.

The government introduced the Dangerous Goods Safety Bill 2002 to the Parliament in December 2002, to repeal the Explosives and Dangerous Goods Act. It stated that the Bill will reduce restrictions on competition while retaining the necessary public interest restrictions on the use of dangerous goods. It also noted that the transport, storage and handling provisions of the Bill are based on national Regulations and standards. Passed by the Lower House of Parliament on 18 June 2003, the Bill was introduced to the Upper

House on 24 June 2003. The 2003 NCP assessment found that Western Australia had not completed its reform activity, because this Bill remained in the Upper House for several months. The Bill was finally passed on 11 May 2004 with amendments. The Legislative Assembly agreed to these amendments on 1 June 2004.

The Council thus assesses that Western Australia has met its CPA clause 5 obligations.

B6 Ports and sea freight

Jetties Act 1926 and Regulations
Lights (Navigation Protection) Act 1938
Marine and Harbours Act 1981 and Regulations
Shipping and Pilotage Act 1967 and Regulations
Western Australian Marine Act 1982

The government has not conducted a review of these Acts but proposes to introduce new legislation governing maritime activity. The Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill will repeal the Acts. The two new Bills were introduced to the previous Parliament in 1999 but lapsed when the Parliament was prorogued before the 2001 state election.

The current government intends to redraft the Maritime Bill, partly in response to machinery-of-government changes. At the time of the 2003 NCP assessment, Western Australia had advised the Council that the earliest time for redrafting the Bill would be the second half of 2003. The 2003 assessment found that Western Australia had not completed its review and reform activity.

When the former government first introduced the Maritime Bill 1999, it contended that the Bill's objectives were to enable the provision of infrastructure necessary for the efficient and safe conduct of maritime activities, and to facilitate vessel safety. It added that it sought to replace fragmented legislation with simple and up-to-date legislation. The extent of competition restrictions in the current legislation is not clear, other than that the legislation contains restrictions on competition relating to licensing provisions that the government listed for review. Western Australia subsequently stated that reviews were not required for the Shipping and Pilotage Act and the Western Australian Marine Act.

There has been no review of the legislation and legislative redrafting has not commenced, so the Council confirms its previous assessment that Western Australia has not met its CPA clause 5 obligations in this area.

B7 Air transport

Transport Co-ordination Act 1966

This Act provides for the licensing of vehicles (including aircraft) used for commercial purposes and the regulation of the transport services provided by these vehicles. The 1999 review report recommended that this general provision be circumscribed so licences are required only where there is a public benefit. The government endorsed this recommendation and intended to repeal this section of the Act and replace it with provisions that relate to the requirement for a licence to be in the public interest.

The collapse of Ansett in September 2001 had a significant impact on the air transport market in Western Australia, leading the government to further review its intrastate aviation policy. As a result of this review in 2002, the government undertook three key initiatives:

1. For the air routes that connect Perth with major coastal towns (including Exmouth, Carnarvon, Geraldton, Albany and Esperance — the so-called 'non-jet routes' with passenger movements below 55 000 to 60 000 per year), the government extended Skywest's monopoly for the nine months to May 2003. It subsequently extended this licence for another two years, subject to a review being completed by May 2004, after which the government would decide to either deregulate the network from May 2005 or go to competitive tender.

2. The government considered issuing competitive tenders for other routes that cannot sustain competition, involving the tendering of exclusive licences (sole operating rights) for a period of up to three years.

3. The government consulted with some mining companies in the Northern Goldfields area and with other companies in the wider resource sector, to ascertain whether there is scope for consolidating the charter services that they use with the regular passenger transport services to nearby towns.

The 2003 NCP assessment concluded that Western Australia had not completed its review and reform activity in the aviation transport sector, and noted that the precise nature of the prospective legislative reform was unknown.

In May 2004 the Minister for Planning and Infrastructure announced that the government would continue to regulate the non-jet intrastate air services and introduce a tender process for clusters of routes, with the successful tenderers providing the new services from December 2005. The government will retain current monopoly providers on regulated routes until then. It has noted that extending the current monopoly arrangements to December 2005 is necessary to allow potential bidders sufficient time to put together their tender proposals and to prepare for service provision if successful. The

government expects to advertise the tenders around by the end of February 2005 and announce its decision on the successful tenderers around June 2005.

The Council notes that the government's announced direction would establish a competitive tendering approach similar to that adopted in Queensland for regional air services. That model has been accepted by the Council as being consistent with CPA obligations. The Council will monitor Western Australia's progress.

Given that reform activity in Western Australia's aviation transport sector is still in progress, and amendments to the Transport Co-ordination Act are yet to be drafted, the Council assesses that the state is yet to meet its CPA clause 5 obligations in this area.

C1 Health professions

Chiropractors Act 1964

Western Australia completed its NCP review of health practitioner legislation (including the Chiropractors Act) and in April 2001, the government approved the drafting of new template health practitioner Acts to replace the Chiropractors Act and other health professions legislation. These reforms are outlined in the state's *Key directions* paper (Government of Western Australia 2001b). The template legislation was to retain broad practice restrictions across professions (including those for chiropractors). These restrictions were scheduled to be automatically repealed under the template legislation by 1 July 2004, or replaced sooner by specific core practice restrictions, depending on the outcome of the core practices review under way.

The drafting of template health legislation commenced in 2001, while a core practices discussion paper was released in March 2003. However, the state has not completed either reform.

In its 2004 NCP annual report, the state has advised that a package of health practitioner Bills will be introduced to Parliament this year. This package is to comprise the Chiropractors Bill 2004, the Dental Bill 2004, the Optometrists Bill 2003, the Occupational Therapists Bill 2004, the Osteopaths Bill 2004, the Podiatrists Bill 2004, the Nurses Bill 2004, the Physiotherapists Bill 2004 and the Psychologists Bill 2004. However, the government has not yet approved the recommendations of the core practices review, and the review outcomes are unlikely to be integrated into the Bills before they are put to Parliament. The state has subsequently indicated that existing practice restrictions will remain pending the implementation of the core practices review recommendations through an amendment Bill.

In the context of the 2003 NCP assessment, the Council considered that the state's amendments to implement core practice reforms were a significant

issue because they have the potential to deliver substantial benefits to the Western Australian community and the economy more generally.

Given that Western Australia still has not implemented template legislation incorporating core practice reforms, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations regarding chiropractors and other professions subject to the reforms.

Dental Act 1939
Dental Prosthetists Act 1985

In addition to general health practitioner reforms, the government's *Key directions* paper (Government of Western Australia 2001b) proposed specific reforms for the dental profession. The state's 2004 NCP annual report has advised that a particular reform allowing dental prosthetists to construct and fit partial dentures will be addressed in the Dental Prosthetists Amendment Bill 2004, which received its second reading in the Legislative Assembly on 12 May 2004.

However, the state has not implemented template legislation, core practice or specific reforms. The Council thus confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform dentistry legislation.

Medical Act 1894

The two key outcomes of the Western Australian review of the Medical Act were the rationalising of advertising restrictions and the changing of the disciplinary system, including the establishment of a medical tribunal independent of the Medical Board to deal with serious disciplinary matters.

Western Australia's 2003 NCP annual report advised that Cabinet had accepted the review recommendations relating to the Medical Act and had commenced drafting of a Medical Practitioners Registration Bill to replace the current Act. The state also advised that it expected to introduce the Bill into Parliament in the latter half of 2003. The Council thus assessed Western Australia as not having complied with its CPA obligations because it had not completed its review and reform activity.

There does not appear to have been significant reform progress since the 2003 NCP assessment, with the state's 2004 NCP annual report advising that the Medical Practitioners Registration Bill 2004 is still being drafted. This Bill is expected to limit controls on advertising to those reflecting consumer protection provisions (consistent with review recommendations) and remove ownership restrictions.

The state has advised that the timing of new legislation has been influenced by the intention to establish a State Administrative Tribunal (consistent with review outcomes) which has been subject to delays. The Council considers that the government should expedite the resolution of these and other

outstanding issues, where practicable, to reduce delays in implementing reforms.

The Council notes that these proposed amendments are likely to be consistent with clause 5(1) of the CPA. However, given that Western Australia has not implemented reforms to its medical practitioner legislation, the Council confirms its 2003 assessment that the state has not yet met its review and reform obligations for this profession.

Nurses Act 1992

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Nurses Bill 2004 to Parliament this year to replace the Nurses Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors). Given that Western Australia has not yet passed reforms, it has not yet met its CPA obligations in relation to legislation regulating the nursing profession.

Optometrists Act 1940
Optical Dispensers Act 1966

Western Australia has advised in its 2004 NCP annual report that it expects to introduce an Optometrists Bill to Parliament this year to replace the Optometrists Act. This Bill will clarify that ownership restrictions do not exist for optometrists, and it is part of the state's template health practitioner reforms (see the section on chiropractors).

The Council's 2003 NCP assessment noted that the government's *Key directions* paper (Government of Western Australia 2001b) provided for a review of the Optical Dispensers Act to assess the need for practice restrictions for this profession. In its 2004 NCP annual report, Western Australia advised that following a review outcome that there is no evidence that practices carried out by optical dispensers pose a risk of harm to the public, the state would repeal this Act.

The Council's 2003 NCP assessment considered that restrictions on optical dispensing are unlikely to have a significant impact on competition. However, it noted that the overall package of reforms has the potential to deliver substantial economic benefits to Western Australia.

Given that reforms have not been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating optometrists.

Osteopaths Act 1997

Western Australia has advised in its 2004 NCP annual report that it expects to introduce an Osteopaths Bill 2004 to Parliament this year to replace the

Osteopaths Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

The Council's 2003 NCP assessment noted that the state is using the Osteopaths Act as model legislation in its health practitioner reforms. However, while the state expects to make only minor amendments to the Act as part of the template legislation reforms, further amendments may be necessary to incorporate the outcomes of the core practices review.

Given that the revised legislation and associated core practice reforms have not been implemented to date, the state has not yet met its CPA obligations to review and reform legislation regulating osteopaths.

Pharmacy Act 1964

CoAG national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and allow friendly societies to operate in the same way as other pharmacies (see chapter 19 for further information on the national review process). Compliance with these requirements requires the state to remove these restrictions contained in the Pharmacy Act.

In its 2004 NCP annual report, Western Australia advised that delays in implementing pharmacy reforms have largely been caused by the ongoing debate on this issue. Chapter 19 in relation to pharmacy provides further information in this respect.

In September 2004 the Government endorsed the majority of recommendations of the NCP review of pharmacy and approved the drafting of new legislation to replace the Pharmacy Act. The new legislation will effectively implement the recommendations of the Wilkinson Report as amended by the Senior Officials, in all respects bar one. Rather than remove the cap on the number of pharmacies that an individual pharmacist (or friendly society) may own or have an interest in, Western Australia intends to relax the restriction in line with the Prime Minister's advice to other jurisdictions, particularly Tasmania.

However, these reforms, if implemented by jurisdictions (including Western Australia), fall short of those required by CoAG.

Given that Western Australia has not implemented reforms consistent with CoAG requirements to date, the state has not yet met its CPA obligations in relation to this profession.

Physiotherapists Act 1950

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Physiotherapists Bill 2004 to Parliament this year to replace

the *Physiotherapists Act*. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not yet been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating physiotherapists.

Podiatrists Registration Act 1984

Western Australia advised in its 2004 NCP annual report that it expects to introduce a Podiatrists Bill 2004 to Parliament this year to replace the Podiatrists Registration Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not yet been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating podiatrists.

Psychologists Registration Act 1976

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Psychologists Bill 2004 to Parliament this year to replace the Psychologists Registration Act. The Bill is also expected to partially address core practice issues by removing the licensing requirements and the definition of hypnosis from the psychology legislation. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not been implemented to date, the state has not yet met its CPA obligations to review and reform legislation regulating psychologists.

Occupational Therapists Registration Act 1980

The key restriction in the Occupational Therapists Registration Act relating to occupational therapists is title protection. In its 2002 and 2003 NCP assessments, the Council assessed this restriction as being noncompliant with CPA obligations.

Title protection can restrict competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the fees required of applicants for registration restrict entry to the profession of occupational therapy and potentially weaken competition among occupational therapists.

The state has advised in its 2004 NCP annual report that it intends to introduce an Occupational Therapists Bill 2004 to Parliament this year that will retain title restrictions. Western Australia's justification for maintaining title protection is that some activities — such as the use of electromyography — pose a potential risk of harm to the public. The state contends that this risk outweighs the benefits of further competition, so the profession should be regulated.

In the absence of a robust public interest case, the Council does not accept the harm minimisation rationale because there does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as common law, the Trade Practices Act and independent health complaints bodies. However, while the Council considers that title protection restricts competition, the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles.

Given that the pending Occupational Therapists Bill 2004 has not been enacted, the Council assesses the state's review and reform in this area as being incomplete. (If the state retains title protection in any ensuing legislation, it will be assessed as having failed to meet its CPA clause 5 obligations in relation to occupational therapists).

C2 Drugs, poisons and controlled substances

Poisons Act 1964
Health Act 1911 (Part VIIA) (drugs and poisons)

Following the outcome of the Galbally review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. CoAG is now considering the proposed response out of session.

Western Australia has already implemented some recommendations of the Galbally report in advance, by:

- adopting all the scheduling decisions covered in the Standard for the Uniform Scheduling of Drugs and Poisons by reference
- repealing the provisions that apply to licences for substances with low and moderate potential for causing harm, and streamlining conditions that apply to poisons licences in relation to schedule 2.

The state has advised that additional legislative changes addressing the Galbally recommendations will be implemented following the outcome of interjurisdictional processes.

Western Australia has demonstrated a commitment to meeting its CPA obligations by implementing those reforms that could be achieved in the absence of CoAG's final response. The Council considers that other jurisdictions could also have considered such an approach.

However, because the state has not completed its implementation of the Galbally recommendations, the Council assesses that Western Australia has not yet met its review and reform obligations in this area.

D Legal services

Legal Practitioners Act 1893

The *Legal Practice Act 2002* implements many recommendations of the 2002 review of the Legal Practitioners Act. These include changes to create the capacity to allow incorporated legal practices and multidisciplinary partnerships. Further, the State Administrative Bill 2003, if passed, will remove restrictions on the practice of tribunal related work and implement changes to arbitration services, which nonlawyers may undertake consistent with review recommendations.

The state has also indicated that it will consider (in the context of national reforms) the review recommendation to codify the existing practice of allowing practitioners to opt out of insuring through the Law Society if they have secured an appropriate level of professional indemnity insurance through other means.

The Council considers that Western Australia has implemented many recommendations from its NCP review of the legal profession, with further reforms pending in the State Administrative Tribunal Bill 2003. While no discernible progress has been made to implement professional indemnity insurance reforms, the capacity of legal practitioners to opt out of the Law Mutual insurance scheme suggests delays in implementing the reforms may not be significant.

Nevertheless, because the state has not yet implemented outstanding review recommendations, it has not yet met its CPA obligations in relation to the legal profession.

E Other professions

Debt Collectors Licensing Act 1964

Western Australia completed the NCP review of the Debt Collectors Licensing Act in 2003 and Cabinet endorsed the recommendations. The review

recommended retaining, for public interest reasons, the licensing arrangements, trust account provisions, the requirement to lodge a fidelity bond and the upper limit on fees that debt collectors can charge. It also recommended extending licensing to cover employees and making debt collectors responsible for licensing their employees. The review found other restrictions were not in the public interest. It recommended removing the limits on fees that debt collectors charge, and the requirement for written contracts between creditors and debtors. It also recommended reducing the age restriction for a licence from 21 to 18 years of age and replacing the annual licence with a three-year licence, but conducting random inspections of trust accounts to ensure compliance. The necessary amendments have not yet been drafted.

Because Western Australia has not implemented the review's recommendations, the Council assesses it as not having met its CPA obligations in this area.

Motor Vehicle Drivers Instructors Act 1963

A review of the Motor Vehicle Drivers Instructors Act and Regulations was completed and presented to the government in October 2003. The review identified the major restriction in the Act to be that a person wishing to act as a driving instructor, within the meaning of the Act, must be licensed and, therefore, must meet the Act's licensing requirements. The review considered alternative means of achieving the legislative objectives and found that these approaches did not achieve the legislative objectives as efficiently as the current licensing process.

The review recommended that the Act be retained, finding that the principal competition restrictions (relating to qualifications for driving instructors) are in the public interest. The review also proposed amendments that revolve primarily around safety and probity matters.

The government endorsed all the review recommendations, except a recommendation to amend the Regulations to require duplicate controls on every vehicle 'utilised', rather than 'provided', by a driving instructor in the course of driving instruction. The recommendation would have precluded learner drivers from gaining licensed instruction in their own vehicles, and was considered unnecessarily restrictive.

The government has approved the drafting of the legislative amendments required to implement the recommendations of the review. The remaining recommendations will be implemented via regulatory amendment in the *Government Gazette*, or administratively as required.

Although Western Australia has not implemented all of the recommended reforms, the review determined that the key restrictions on competition are in the public interest. Accordingly, the Council assesses that Western Australia has met its CPA obligations in this area.

Pawnbrokers and Second-hand Dealers Act 1994

The government endorsed the recommendations of the second review of the Pawnbrokers and Second-hand Dealers Act and prepared amending legislation — the Pawnbrokers and Second-hand Dealers Amendment Bill 2003 — which is awaiting Cabinet endorsement. The review recommended placing general licence conditions in the Regulations rather than on individual licences, making illegal the repurchasing of goods by pawnbrokers, increasing fines for serious breaches of licence conditions, having separate licences for separate business premises, and requiring dealers to display their licence number to the public.

Because Western Australia has not implemented reforms, the Council assesses it as not having complied with its CPA obligations in this area.

Real Estate and Business Agents Act 1978

Western Australia endorsed the review of the Real Estate and Business Agents Act in February 2003 but is yet to introduce amending legislation. The review recommended:

- retaining licensing to protect consumers against financial loss should agents or sales representatives engage in dishonest, incompetent or negligent conduct
- allowing the Real Estate and Business Agents Board to recognise qualifications other than those prescribed
- legislating explicit criteria to determine whether a person has a conflict of interest and whether they have sufficient material and financial resources
- removing restrictions on who may audit trust accounts and the requirement for board approval of franchise agreements
- requiring only one director or partner of a licensed partnership or body corporate to be licensed.

Because Western Australia has not implemented reforms, the Council assesses it as not having complied with its CPA obligations in this area.

Travel Agents Act 1985 and Regulations

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

Western Australia advised that Cabinet endorsed the findings of the national review on 23 June 2003 and has commenced implementation of the proposed reforms.

For the removal of the exemption for Crown-owned business entities, Western Australia gazetted an Order under the Travel Agents Act in December 2003, which effectively repealed the exemption for other state and territory Crown-owned business entities operating in Western Australia. Removal of the exemption for Western Australian Crown-owned business entities requires legislative amendment. Western Australia proposes to include this amendment in the Consumer Protection Legislation Amendment and Repeal Bill 2004.

For the lifting of the current licence exemption threshold to a turnover of $50 000 per year, Western Australia implemented an amendment by Order (gazetted in December 2003) under the Travel Agents Act.

Western Australia has not met its CPA obligations in relation to travel agents legislation because it has not yet completed its reform activity.

Auction Sales Act 1973

The Ministry of Fair Trading completed an NCP review of the Auction Sales Act in 2001. The review found that licence fees, the licence application process and the 'fit and proper' person test do not appear to have significantly restricted access to the industry. However, although the costs of the licensing system (reduced competition, less innovation, higher prices) had been small, it could not be demonstrated that the benefits (greater consumer confidence, easier enforcement) outweighed these costs. The review concluded that it is not in the public interest to continue with the current licensing arrangements for auctioneers.

However, the review process revealed a need to consider the adequacy and scope of the provisions of the Act, and to investigate the need to include other provisions to regulate auctions and ensure fair competition. It recommended, therefore, that a general review of the Act be undertaken to consider alternative mechanisms of regulation (such as negative licensing, registration or certification) as replacements for the Act's occupational licensing provisions. The Department of Consumer Protection is finalising the general review in line with the recommendations of the NCP review.

Western Australia will have met its CPA obligations in relation to auctioneers when it removes the licensing arrangements for auctioneers either separately or as part of its response to the general review of the Act.

Settlement Agents Act 1981

Western Australia has legislation permitting nonlawyers to undertake certain activities traditionally reserved for legal practitioners, including

conveyancing. The review of the Settlement Agents Act found a net public benefit in licensing settlement agents but recommended several reforms, including:

- replacing the requirement for agents to have 'sufficient material and financial resources' with more specific requirements
- removing the residency requirement
- replacing caps on the maximum fees that an agent can charge with a disciplinary offence of receiving or demanding an excessive fee and giving the board the power to order repayment of an excessive fee received
- retaining the requirement for agents to hold professional indemnity and fidelity insurance, but permitting licensees to choose their insurer.

Cabinet endorsed the review recommendations in May 2002. The required amendments to the Act are being progressed, together with amendments to the *Real Estate and Business Agents Act 1978*, in a Bill that is being developed.

The Council assesses Western Australia as not having met its CPA obligations in this area because it has not completed reforms.

Employment Agents Act 1976

In October 2003 the government announced its acceptance of the recommendations of its review of the Employment Agents Act. The review recommended:

- replacing the requirement for employment agents to be licensed with a negative licensing scheme
- relaxing the requirement to provide employees with a 'Notice of Employment' where provision of such notice is impractical, subject to the consent of the employee
- removing the need to seek approval of a scale of fees chargeable to employers
- allowing fees to be negotiated between employment agents and employers but precluding agents from demanding or receiving any fee that is unjust, where there is no prior agreement.

The review also recommended retaining the prohibition against the charging of fees to employees, and the requirements relating to the provision of statements of account to employees.

Western Australia is yet to give effect to the review recommendations, so the Council assesses it as not having met its CPA obligations in this area.

Hairdressers Registration Act 1946

Western Australia's Hairdressers Registration Act applies to hairdressers working in the Perth metropolitan area, in the South West Land Division and within an eight-kilometre radius of the Kalgoorlie general post office. The Act aims to establish minimum quality and health and safety standards in the hairdressing industry. To be registered as a hairdresser, a person must satisfy the Hairdressers Registration Board that they are of good character, complete an appropriate course of training and pass appropriate examinations. The Act also places restrictions on the operation of hairdressing businesses and the type of hairdressing duties that a registered hairdresser can undertake.

A review of the Act recommended that registration be retained and extended to apply to the whole state. It found that the public interest is best served by requiring hairdressers to be qualified to maintain hygiene and sanitation to reduce the risk of physical harm to customers and to provide higher quality services. In February 2003 the government endorsed the recommendation to retain the hairdressers' registration scheme.

In its 2003 NCP assessment, the Council assessed Western Australia as not having complied with its CPA obligations in relation to hairdressers because the state had not provided a sufficiently robust public benefit case to support its retention of licensing. The Council noted too that the review did not adequately consider less restrictive alternatives such as negative licensing.

In its 2004 annual report to the Council, Western Australia has maintained that registering hairdressers is in the public interest because 'there is no evidence that the quality of service is of a different standard in parts of Western Australia where registration is required compared with other parts of Western Australia or other jurisdictions where similar registration requirements do not apply' (Government of Western Australia 2004, p. 52). The presumption of the CPA is that restrictions on competition should be removed if they cannot be shown to be in the public interest. That is, the burden of proof rests with a government wishing to retain regulation, which must demonstrate that the restriction provides a public benefit. The statement above suggests that Western Australia cannot demonstrate a net public benefit from the regulation, only that registration leaves consumers in regulated areas no worse off than those in unregulated areas.

Western Australia further argues that registration, because it is granted only to hairdressers that achieve minimum competency standards, protects consumers from unqualified operators. However, it is possible to require hairdressers to hold appropriate qualifications without requiring registration (as in New South Wales, for example). Such a requirement, in conjunction with general health and safety obligations, appears to offer consumers adequate protection.

Western Australia questions whether negative licensing would be suitable for the hairdressing industry. The 2004 NCP annual report states that because there is 'a significant number of unqualified or semi-skilled people already

practising hairdressing in a regulated environment, negative licensing would prove impossible to monitor and police and would have to rely upon consumers to identify the operators involved' (Government of Western Australia 2004, p. 53). However, it is not clear to the Council why the establishment of negative licensing procedures that empower consumers in this way is inappropriate.

The Council maintains its previous assessment that Western Australia has not demonstrated a net public benefit from hairdresser registration and, therefore, has not complied with its NCP obligations in this area.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Motor Vehicle (Third Party Insurance) Act 1943

In Western Australia, compulsory third party motor insurance is provided by a statutory monopoly under the Motor Vehicle (Third Party Insurance) Act. The previous government endorsed the legislation review of compulsory third party insurance in 2000, which recommended multiple provision. The current government withdrew amending legislation in 2001 and decided not to pursue any reforms. In its 2004 NCP annual report, the government has advised that the current arrangements should be left untouched while the compulsory third party scheme remains financially sound.

For reasons outlined in chapter 9, the Council has not assessed Western Australia's compliance with its CPA obligations in this area for the 2004 NCP assessment.

Workers Compensation and Rehabilitation Act 1981

In Western Australia, multiple provider arrangements operate in relation to workers compensation insurance. Consequently, there is no principal restriction on competition occasioned by statutory monopoly provision. Following the completion of the NCP review of workers compensation in early 2002, the government expects to introduce minor legislative amendments to Parliament in spring 2004. Following discussions with officials, the Council is satisfied that these amendments will not affect the multiple provision of workers compensation insurance in Western Australia.

The Council assesses Western Australia's review and reform of the Act as having met its CPA clause 5 obligations in this area.

F2 Superannuation

State Superannuation Act 2000

In February 2003 the Western Australian Government endorsed the recommendations of a 2001 review of the State Superannuation Act and Regulations. The review was undertaken by an independent consultancy, and the terms of reference required the consultant to focus on the government's objectives in the Act, identify the competition restrictions and assess their benefits and costs, and consider alternative means of meeting the legislation's objectives.

The review confirmed that the Act's main restriction on competition is the requirement that employer contributions for most public servants' superannuation be paid solely to the Government Employees Superannuation Board. The review recommended that the board's status as sole superannuation provider for most public servants should be maintained on public interest grounds associated with the government's minimisation of its financial risks arising from funding the public superannuation schemes, maintaining scale and cost efficiencies within the Government Employees Superannuation Fund, the liquidity of fund investments and the prudential protection of superannuation members. Like Queensland, Western Australia referred to the fact that most individuals have a limited understanding of superannuation, and concluded that offering choice may lead to lower retirement benefits for public sector employees than provided by the current arrangements.

The government introduced, from 1 July 2001, a choice of investment type for members of West State Super (the only public sector superannuation scheme open to new employees) for both employer and voluntary contributions: members can choose from a portfolio of products offered by the Government Employees Superannuation Board. The board, in turn, outsources the management of the assets in its superannuation fund. It selects specialist fund managers in a competitive process and regularly reviews their performance.

Western Australia's review of its public sector superannuation legislation was conducted in accord with the CPA clause 5 guiding principle. It argued that the benefits of the board's sole provision of public sector superannuation services for most public servants outweigh the costs. The Council assesses that Western Australia has met its CPA obligations for this legislation.

G1 Shop trading hours

Retail Trading Hours Act 1987 and Regulations

Western Australia's Retail Trading Hours Act:

- restricts Monday to Saturday trading hours for all shop categories to prescribed opening and closing times. 'Small' retail shops and 'special' retail shops have longer opening hours than those of 'general' retail shops.[3]

- prohibits Sunday trading for 'general' retail shops outside tourism precincts.

On 24 June 2003 the government announced that:

- retail trading hours in the Perth metropolitan area would remain unchanged until after the next state election in early 2005

- from 2 May 2005, weeknight trading hours would be extended to 9 pm

- a review of trading hours would take place three years after the date of assent to the Bill which implements the above change.

The Bill was, however, rejected by the Legislative Council on 19 August 2004.

In its 2003 NCP assessment, the Council did not consider that the changes announced by the Western Australian government, involving the retention of restrictions until 2005, constituted an appropriate transitional reform measure underpinned by a public interest case. Since that assessment, the only development has been the Parliamentary rejection of these limited reforms. Western Australia is the only jurisdiction in which significant restrictions continue to apply to trading hours. The government has not publicly released a review report or provided a sufficiently robust public interest case to support the retention of restrictions that have been largely removed in all other jurisdictions without adverse social or economic impacts.

The Council thus confirms its previous assessment that Western Australia has not met its CPA clause 5 obligations in relation to shop trading hours.

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[3] The Act distinguished between 'general', 'small' and 'special' retail shops according to their size or types of good sold. General retail shops are larger, nonspecialist retailers such as department stores and larger supermarkets.

G2 Liquor licensing

Liquor Licensing Act 1988 and Regulations

Western Australia's Liquor Licensing Act contains two significant competition restrictions:

1. A needs test requires licence applicants to satisfy the licensing authority that the licence is necessary to provide for the requirements of the public, given the number and condition of licensed premises existing in the affected area, their distribution, and the extent and quality of their services. Objection to the granting of a licence may be made on the grounds that the licence is unnecessary to provide for the requirements of the public.

2. There is discrimination between hotels and liquor stores: liquor stores are prohibited from trading on Sundays, when hotels may open from 10 am to 10 pm.

Western Australia's review reported in March 2001. It recommended that:

- the granting of a licence should depend on the licensing authority being satisfied that the licence is in the public interest, and that the authority in assessing the public interest, should not consider the impact of competition on individual competitors.

- Sunday trading hours for hotels and liquor stores should be the same with both types of outlet permitted to trade on Sundays between 10 am and 10 pm.

In September 2003, the government announced a package of reform measures to take effect from 1 July 2005, including:

- the replacement of the public needs test with a public interest test

- a simplification of licence types

- provision for outlets engaged in similar activities to open during the same hours. This will enable liquor stores to trade at the same times as hotels, including Sundays.

In its 2003 NCP assessment, the Council assessed Western Australia as not having complied with its CPA obligations in relation to liquor licensing, noting that the government had not provided a public benefit case to support delaying its reforms until 2005.

In March 2004 the government announced that it would not proceed with the proposed reforms because it considered that they would not be passed by the Legislative Council. Instead, Western Australia proposed to undertake an independent review of the legislation. In June 2004 Cabinet agreed on the

terms of reference for a review of the Liquor Licensing Act. In September 2004 the Government appointed a Review Committee and the Committee called for public submissions in October 2004. The Committee has been given a six-month period to undertake the review.

The Council thus confirms its assessment that Western Australia has not met its CPA clause 5 obligations in this area.

G3 Petrol retailing

Petroleum Products Pricing Amendment Act 2000
Petroleum Legislation Amendment Act 2001

Western Australia has a series of fuel pricing measures that affect petrol retailing. Fuel pricing is regulated primarily through the Petroleum Products Pricing Amendment Act and the Petroleum Legislation Amendment Act. Restrictions include:

- a requirement that retailers fix their prices for at least 24 hours and notify these prices to the Department of Consumer and Employment Protection for publication on its FuelWatch web site (the 24 hour rule)
- maximum wholesale price arrangements
- the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier (50/50 legislation)
- mandatory price boards to be displayed in all regional centres.

Both Acts were subject to an NCP review by the Department of Consumer and Employment Protection. The review found that regulation of the petroleum industry is in the public interest because it protects consumers, encourages stability in pricing and provides for transparency in pricing.

In its 2003 NCP assessment, the Council noted the findings of two Australian Competition and Consumer Commission (ACCC) reports on fuel price variability (ACCC 2001 and 2002). The ACCC's 2001 report found that industry participants did not support the arrangements in Western Australia. It also found that the state's legislation had no consistent impact on prices. The ACCC's 2002 report found that the restrictions did not appear to be achieving their objectives (that is, there had been no material change in the variation of price cycles, and their duration had increased marginally) and are likely to have an adverse effect on competition by restricting the ability of independent sellers to adjust their prices. The 2003 NCP assessment also contained details of Western Australia's response to the ACCC's findings.

In 2003 Western Australia wrote to the Council contesting the ACCC's finding that industry participants did not support the fuel pricing

arrangements in Western Australia. The letter quotes an anonymous refiner/marketer who expresses support for the arrangements. Western Australia's 2004 NCP annual report to the Council contains price data indicating that the underlying differential between Western Australian prices and those of Sydney and Melbourne is approximately 0.3–0.35 cents per litre when the cost impact of higher standard fuel is removed. Western Australia has maintained that this cost is justified by the better price information its 'FuelWatch' provides to consumers. In correspondence with the Council, Western Australia estimated the regulatory and compliance costs associated with its pricing arrangements as being $1.12 million, and the price benefits to motorists as being $85 million. It also informed the Council in July 2004 that Perth motorists faced the lowest average ULP price in mainland Australia in March and April 2004. Allowing for a government rebate in Brisbane and Melbourne, the government estimates that Perth motorists paid, on average, 2.5 cents per litre less than Adelaide motorists, 2.3 cents per litre less than Brisbane motorists and 1.3 cents per litre less than Melbourne and Sydney motorists. In October 2004, Western Australia provided further evidence to support its view that the legislation provides a net benefit to the community.

As in 2003 the Council is confronted with conflicting views from the Western Australian Government and the ACCC concerning the public benefits of Western Australia's fuel pricing restrictions. While the Council acknowledges that the arrangements are not overly expensive to administer, and that Western Australian fuel prices may be below those of other jurisdictions at times, the evidence of the ACCC casts doubt on whether the restrictions provide consistently lower fuel prices or less volatile and shorter fuel price cycles. The possibility (refuted by Western Australia) that its arrangements may also deter the ability of independents to respond quickly to prices (potentially influencing their decision to operate in that market) is also of concern to the Council. Western Australia's fuel pricing legislation has been in operation for almost three years since the initial in-house review was completed. It would be appropriate for a properly constituted independent review to evaluate the conflicting views on the impact of the legislation during this period using the considerable amount of evidence now available.

The Council considers that Western Australia is yet to demonstrate that its petrol pricing restrictions provide a net public benefit and thus confirms its 2003 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

Environmental Protection (Diesel and Petrol) Regulations 1999

Western Australia introduced higher fuel standards via the Environmental Protection (Diesel and Petrol) Regulations 1999. The specifications for unleaded petrol are not currently matched by any other state or territory, although national unleaded petrol standards will align with the Western Australian specifications in 2006, with the exception of the methyl tertiary butyl ether (MTBE) additive and aromatics.

The limit for MTBE will be 0.1 per cent in Western Australia as opposed to 1 per cent in the federal standards. The limit on aromatics will be 42 per cent in Western Australia, compared with a 42 per cent pool average over six months with a cap of 45 per cent for the Australian Government. The Regulations have the potential to reduce competition by making it more difficult to import fuel into Western Australia, leaving the only refinery in Western Australia as a virtual monopolist at the wholesale level.

Western Australia conducted a review of the fuel standards Regulations and the government endorsed the findings in February 2001. The review considered that the benefits of higher standards are:

- the likelihood of reduced morbidity and mortality due to improved air quality
- the likelihood of reduced health care costs due to improved air quality
- the avoidance of expensive treatment cost to remediate potable groundwater contaminated with MTBE
- improved occupational health and safety in the mining industry, especially in underground operations.

The higher standards impose a cost of approximately 1.62 cents per litre. Western Australia has drawn the Council's attention to a survey by the Royal Automobile Club in which the majority of respondents indicated they were willing to pay up to an extra 2 cents per litre for cleaner fuel. Western Australia considers that the benefits of higher standards outweigh the costs, and that other jurisdictions are moving to the higher standard for this reason. Western Australia will complete a further review of its MTBE levels before 1 January 2006.

The Council has no evidence that Western Australia's environmental concerns, particularly in relation to groundwater pollution, do not justify the adoption of the higher standard before other jurisdictions.

The Council thus assesses Western Australia as having complied with its CPA clause 5 obligations in relation to fuel standards.

H1 Other fair trading legislation

Retirement Villages Act 1992

The government endorsed a review of the Retirement Villages Act in May 2002. The review recommendations included:

- amending restrictions on the use of retirement village land

- incorporating the Act and the Code of Fair Practice for Retirement Villages into a single Act

- amending restrictions on the marketing and price determination rights of residents.

The review recommended retaining the Act's remaining restriction on competition, which relates to parties' representation in proceedings before the Retirement Villages Disputes Tribunal. Western Australia is drafting amendments to enact the recommended reforms.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because the state has not completed the reform process.

H2 Consumer credit legislation

Credit (Administration) Act 1984

Western Australia has completed NCP reviews of the Credit (Administration) Act. The reviews recommended that the Act be amended to:

- replace the licensing requirement for credit providers with a system of registration coupled with negative licensing

- replace the prohibition against persons having a business as a credit provider when in partnership with an unlicensed person, with a provision prohibiting a registered person from having a business in a partnership with a person who has been prohibited from having such a business under the proposed negative licensing provisions.

Cabinet endorsed the review report on 4 August 2003, but Western Australia is still to implement the endorsed recommendations.

The Council thus assesses that Western Australia has not met its CPA clause 5 obligations in this area.

Hire-Purchase Act 1959

The review of the Hire-Purchase Act found that the introduction of the Consumer Credit Code had made most of the Act's provisions redundant. It found that the following provisions, however, are justified on public interest grounds:

- the requirement for credit providers to refund any surplus amount following the repossession of goods

- the court's power to re-open 'harsh or unconscionable' hire-purchase arrangements

- restrictions on credit providers' ability to repossess farming goods.

The Hire-Purchase Act was amended by the *Acts Amendment and Repeal (Competition Policy) Act*, so only the above three provisions of the Act continue to apply to new transactions. The amendments were effective from 1 May 2004.

The Council assesses Western Australia as having met its CPA clause 5 obligations relating to the Hire-Purchase Act

H3 Trade measurement legislation

Weights and Measures Act 1915

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19). Western Australia has not reviewed its legislation, but will adopt the changes agreed at the national level by replacing its Act with new legislation.

Because the national review and reform of trade measurement legislation have not been completed (see chapter 19), Western Australia has not been able to repeal its Weights and Measures Act and replace it with new legislation. The Council thus assesses Western Australia as not having met its CPA clause 5 obligations because the state has not completed its reforms.

I1 Education

Education Service Providers (Full Fee Overseas Students) Registration Act 1992

Western Australia is reconsidering its response to the review of the Education Service Providers (Full Fee Overseas Students) Registration Act. The review concluded that the legislative requirements dealing with the registration of education service providers are in the public interest and should be retained. Outstanding minor issues identified by the review include:

- the reasons for the differential treatment arising from exemptions provided to some private schools under the Regulations

- the need to review the policies and guidelines that underpin the Act, in accordance with changes to the Australian Government's *Education Services for Overseas Students Act 2000* and the *Migration Act 1958*

- the uniformity of audit conditions with other statutory providers such as universities and TAFE colleges.

The Council notes that the review found that the Act's major restriction on competition is in the public interest. The remaining issues do not appear to be significant competition issues. The Council thus assesses that Western Australia has met its CPA obligations for this Act.

Curtin University of Technology Act 1966
Edith Cowan University Act 1984
Murdoch University Act 1973
University of Notre Dame Australia Act 1989
University of Western Australia Act 1911

Western Australia completed legislation reviews of its universities' enabling Acts in 1999. The reviews concluded that most restrictions are minor and in the public interest, while recommending that the investment powers of Edith Cowan University be aligned with those of other universities. The state's *Acts Repeal and Amendment (Competition Policy) Act 2004* implemented this recommendation. The government has also required universities to adopt competitive neutrality principles as recommended by a competitive neutrality review of the university business activities.

The Council assesses Western Australia as having met its CPA obligations in this area.

I2 Child care

Community Services Act 1972
Community Services (Child Care) Regulations 1988

The state's NCP legislation review program did not include the 1988 Regulations. Nevertheless, the Department of Community Development carried out an NCP review of the Community Services Act and the Community Services (Child Care) Regulations, which was completed in June 2002 and endorsed by Cabinet in February 2003. The legislation regulates child care and the registration of child carers in Western Australia.

The review recommended retaining the restrictions in both the Act and Regulations because they are in the public interest, and expanding the Regulations' current three-yearly review process to encompass day care outside of school hours. Another recommendation was to consider, via the

three-yearly review process, changing prescriptive regulations to a more outcome based system within the regulatory framework.

The Children and Community Services Bill, which implements review recommendations and replaces the Community Services Act and the Community Services (Child Care) Regulations, was passed in September 2004.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

I3 Gambling

Casino Control Act 1984
Casino (Burswood Island) Agreement Act 1985

Western Australia's *Casino Control Act 1984* requires a licence for the operation of a casino. The review of this Act recommended retaining this requirement and restrictions on the conduct of casinos and casino games. The exclusivity period for the Burswood Casino licence expired in December 2000, but the Casino (Burswood Island) Agreement Act still provides considerable protection by restricting casino games to licensed casinos and requiring that persons wishing to establish another casino within 100 kilometres of the Burswood Casino must house the casino in a complex of similar magnitude. Western Australia's review recommended that the government consider negotiating with the Burswood Casino operators to remove or relax remaining restrictions, but only after undertaking a full public benefit assessment.

The Western Australian Government maintains that the restrictions are of no practical effect because it has a policy of not granting new casino licences in the Perth area. It considers that additional licences would increase the harm posed by problem gambling if greater access to gambling facilities, particularly table games, were made available to the community. It also considers that the costs of removing restrictions or changing current government policy appear to far outweigh the potential benefits from generating intrastate competition in the casino gaming market.

The Council notes the key legislative restriction — the exclusive casino licence period — has expired and accepts that current arrangements provide a public benefit by limiting access to both table games and, more importantly, gaming machines. (Unlike other jurisdictions, the Burswood Casino is the only location for gaming machines in the state.)

The Council thus assesses Western Australia as having complied with its CPA obligations in relation to casino legislation.

Totalisator Agency Board Betting Act 1960

Western Australia's Totalisator Agency Board Betting Act (repealed in 2003) provided for an exclusive off-course totalisator licence. Western Australia's review recommended that the legislation should allow the Minister to grant additional off-course totalisator licences if the Government considers this to be in the public interest. Western Australia initially considered this recommendation in the context of a review of the governance structure of its racing industry. It decided to retain an exclusive licence for the newly formed racing industry governing body, Racing and Wagering Western Australia, established under the *Racing and Wagering Western Australia Act 2003*, to give the organisation time to establish and to consolidate its racing and wagering activities before possibly facing competition.

In its 2004 NCP annual report, Western Australia has advised that it has taken no further action to amend its legislation, on the basis that licensing additional operators may:

- expand opportunities for gambling
- jeopardise funding to the racing industry.

The Council has reservations about both arguments. There is already easy access to totalisator outlets throughout Western Australia. The 2004 NCP annual report even claims the provision of uneconomic totalisator facilities to remote areas is a virtue of current arrangements. Also, the granting of additional licences could be made conditional on appropriate payments to the racing industry (and the provision of remote area facilities, if this is a government objective).

The Council assesses Western Australia as not having met its CPA obligations in relation to totalisator licensing because the state has not demonstrated a public benefit from indefinitely continuing the exclusive totalisator licence.

Betting Control Act 1954
Totalisator Agency Board Betting Act 1960
Racing Restrictions Act 1917
Racing Restrictions Act 1927
Western Australian Greyhound Racing Association Act 1981

Western Australia's racing legislation restricted racing to thoroughbred, harness or greyhound racing, restricted the business structures of bookmakers and set minimum telephone and Internet bet limits with bookmakers. Western Australia completed reviews of the above Acts and replaced them with new legislation.

The *Betting Legislation Amendment Act 2002* implemented most recommendations of the review in relation to betting, including the establishment of corporate licensing structures for bookmakers and the

removal of the restriction on bookmakers fielding only during race meetings. Minimum telephone and Internet bet limits with bookmakers were removed, with effect from 1 July 2004.

The racing restrictions Acts have been repealed and replaced with the *Racing Restrictions Act 2003*. Amendments to the Western Australian Greyhound Racing Association Act included the repeal of Part IV of that Act, which related to restrictions on meetings. The *Racing and Wagering Western Australia Act 2003* came into force in January 2004 establishing Racing and Wagering Western Australia as the new governing body for all of Western Australian racing. This body has an exclusive right to conduct off-course totalisator betting. The new legislation implements several reforms arising from NCP reviews and gained assent on 26 June 2003.

The Council assesses Western Australia as:

- having complied with its CPA obligations in relation to the Western Australian Greyhound Racing Association Act because the new legislation removes previous restrictions on meetings

- not having complied with its CPA obligations in relation to the other legislation because the replacement legislation, while implementing several reforms in relation to bookmakers, continues to provide for the exclusive licence to conduct off-course totalisator betting discussed earlier in this chapter.

Gaming Commission Act 1987

In January 2004, the Gaming Commission Act was amended to the *Gaming and Wagering Commission Act 1987*. Western Australia's NCP review of the then Gaming Commission Act concluded that the existing allow the government to appoint a lotteries supplier other than the Lotteries Commission. The review recommended a less restrictive regulatory framework that provides for the government to license operators other than the Lotteries Commission if in the public interest.

In its 2004 NCP annual report, Western Australia has advised that it has taken no further action to amend its legislation, on the basis that licensing additional operators may:

- expand opportunities for gambling

- jeopardise the distribution of money to hospitals, the arts, sport and community groups from Lotterywest, the current licence holder.

The Council has reservations about both arguments. There is already easy access to lottery outlets throughout Western Australia, and, Western Australia claims, as it did when defending the exclusive TAB licence, that the provision of uneconomic lottery gambling opportunities to remote areas is a virtue of current arrangements. Also, the granting of additional licences could be conditional on appropriate payments to designated community funds.

The Council thus assesses Western Australia as not having complied with its CPA obligations in relation to this Act.

Lotteries Commission Act 1990

Western Australia also completed a review of the Lotteries Commission Act and associated rules in 1997. This Act provides for the powers and rights of the Lotteries Commission. The review recommended retaining the restrictions in the Act in the public interest. It is not clear whether the current powers of the Lotteries Commission are consistent with the more competitive lotteries market recommended by the review of the Gaming Commission Act.

Western Australia reviewed the application of competitive neutrality to the Lotteries Commission and found that this would not provide a net public benefit. It considers that the implications of not applying competitive neutrality principles to the Lotteries Commission are minimal while there is only one licensed provider of lotteries. The government has indicated that if another lotteries provider is considered for licensing, it will reassess whether to apply competitive neutrality principles to the Lotteries Commission. Any such reassessment of competitive neutrality would necessarily examine any potential competitive advantages that may exist in the Lotteries Commission Act.

The Council assesses Western Australia as having complied with its CPA obligations in relation to the Lotteries Commission Act because the review recommendations require no legislative action.

Gaming Commission Act 1987 (as it relates to minor gaming)

Minor gaming in Western Australia is regulated by the Gaming Commission Act, which was amended in January 2004 to the *Gaming and Wagering Commission Act 1987*. A review of the Act was completed in 1998 and recommended:

- removing the restriction on casino games being played for community gaming, subject to appropriate changes being negotiated in the Burswood Casino Agreement
- removing the restriction on the playing of two-up, subject to appropriate changes being negotiated in the Burswood Casino Agreement
- retaining a licensing system for organisations conducting bingo which should be conducted for community benefit rather than for private gain
- retaining licensing requirements and associated operation restrictions for minor lotteries, which should continue to be available to only charitable and community based organisations

- licensing professional fundraisers.

As the government is still considering its response to the review recommendations, the Council assesses it as not yet complying with its CPA obligations for minor gambling.

J1 Planning and approval

Town Planning and Development Act 1928
Western Australian Planning Commission Act 1985
Metropolitan Region Town Planning Scheme Act 1959

Western Australia listed several planning Acts for review under its NCP program, including the Town Planning and Development Act, the Metropolitan Region Town Planning Scheme Act and the Western Australian Planning Commission Act. These Acts provide for controls on land use, which have the potential to hinder the entry of new competitors by impeding commercial development. Delays in planning approval can also inhibit competition. The previous Western Australian Government developed the Urban and Regional Planning Bill 2000, which consolidated this legislation. The NCP review examined both the proposed and existing legislation, but the change of government in November 2001 meant that the review was not submitted to Cabinet.

The current government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002. The Council noted in 2003 that the government planned a new Planning and Development Bill following the receipt of submissions on the position paper. The 2003 NCP assessment found that the government had not completed reform activity.

The government received a number of submissions on the position paper and introduced the Planning and Development Bill and the Planning and Development (Consequential and Transitional Provisions) Bill to Parliament on 30 June 2004. These Bills follow a public consultation process. In introducing the Bill to Parliament, the government stated that the objectives of the new legislation are to consolidate and simplify fragmented legislation, and to provide a clearer, certain and workable planning system. The Government considers that the legislation will enhance the achievement of government planning policy and sustainable land use. The Bills were passed in the Legislative Assembly on 23 September 2004, but have yet to be passed by the Legislative Council.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because it did not complete its reform activity.

J2 Building regulations and approval

Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989

Western Australia reported in 2003 that new legislation was being drafted to replace the Local Government (Miscellaneous Provisions) Act and the Building Regulations 1989. The 2003 NCP assessment found that review and reform activity in this area was incomplete.

Western Australia's 2004 NCP annual report noted that the new legislation will establish a framework for building Regulations and a process for granting building approval. The legislation will adopt the Building Code of Australia as the primary building standard, introduce competition into the building approval and certification process, and provide a registration scheme for qualified building surveyors. The Australian Building Codes Board publishes the Building Code of Australia, which establishes national building standards. Western Australia noted that the Productivity Commission is conducting a research study (to be completed in November 2004) into the contribution that the national building regulatory reform under the auspices of the Australian Building Codes Board has made to building sector productivity. The study will inform national consideration in 2005 of the role of the Board and the Building Code of Australia. Western Australia will await the national review of the Code before implementing its new building legislation. The government is considering amending the Local Government (Miscellaneous Provisions) Act in the meantime to introduce contestable certification services for building approvals.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because it has not completed the reform process.

J3 Building occupations

Architects Act 1921

A national review of state and territory legislation regulating the architectural profession was completed in 2002 (see chapter 19).

Western Australia endorsed the legislative review of its Architects Act in December 2001, and the national working group's response to the Productivity Commission's 2000 report on architectural regulation. In March 2002 Cabinet approved the drafting of amendments to the Act in response to the review and the working group's report. The Architects Bill 2003 is in keeping with the review recommendations:

- Membership of the Architect's Board will be broadened to include industry, consumer and educational representatives.

- The Bill does not include restrictions on practice; it protects title only.

- The title 'architect' will be restricted to registered persons only, but derivatives that describe a recognised competency are permitted (for example, landscape architect or architectural draftsperson).

- Organisations that offer the services of an architect must have adequate arrangements to ensure an architect supervises, controls and is ultimately responsible for the architectural work provided.

- Requirements for registration will be moved to the Regulations and refer to a national standard-setting body, the Architects Accreditation Council of Australia, which is developing a broader system of certification that accounts for different combinations of qualifications and experience.

The public consultation period for the Architects Bill 2003 closed on 4 April 2003. The major change arising from the public consultation period is that half of the Architect's Board will be comprised of registered architects to provide the necessary architectural understanding for the board to carry out its functions. The Architects Bill 2003 was passed in the Legislative Assembly on 5 May 2004, and second read in the Legislative Council on 6 May 2004. The Legislative Council then referred it to the Parliament's Standing Committee on Uniform Legislation and General Purposes Committee. The standing committee tabled its report on 29 June 2004, recommending minor changes that the government is likely to accept. The government anticipates that the revised legislation will be passed in the second half of 2004.

The Council thus assesses Western Australia as not having met its CPA clause 5 obligations because the state has not completed the reform process.

Licensed Surveyors Act 1909

This Act provides for:

- the licensing and regulation of surveyors based on the applicant's ability to provide proof of investment in continuing professional development

- surveyors whose licence certificate has been suspended to be able to apply for its reinstatement

- surveyors to hold professional insurance cover.

The review of the Licensed Surveyors Act and the *Strata Titles Act 1985* was completed in 1998 and recommended retaining these restrictions on public benefit grounds. The review also recommended broadening the make-up of the Land Surveyors Licensing Board to include consumer representation, and

replacing the requirement for licensed surveyors to be of good fame and character with provisions determining eligibility to practise.

The reforms were implemented in the Acts Amendment and Repeal (Competition Policy) Bill 2002, which was passed in November 2003 and received royal assent on 15 December 2003.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

Valuation of Land Act 1987

The review of this Act recommended defining the eligibility for the position of Valuer-General less narrowly, removing the requirement that any person making a valuation for rating and taxing purposes must be licensed, and encouraging a greater flow of information for the purposes of making valuations. The review recommended retaining several restrictions on public interest grounds.

Following the review, amendments to the Valuation of Land Act consistent with the review's recommendations were progressed via the Acts Amendment and Repeal (Competition Policy) Bill 2002 which passed in November 2003 and received royal assent on 15 December 2003.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

Electricity Act 1945 and Electricity (Licensing) Regulations 1991

Western Australia's Electricity Act and Electricity (Licensing) Regulations establish the framework for the occupational regulation of electricians. They provide for licensing and the reservation of practice, and establish entry requirements and disciplinary procedures. Western Australia conducted a review in 1999-2000 that involved comprehensive community consultation. This review found a public interest case for the licensing of electricians.

The 2003 NCP assessment reported that Western Australia had endorsed the review recommendation that licensing of electricians is in the public interest, but was planning to conduct a further review of some provisions. In July 2004, however, Western Australia informed the Council that the review had also recommended retaining restrictions on electrical engineers and 'do-it-yourself' electrical work, contrary to earlier advice that provisions relating to these matters still required examination. (The Council notes that Western Australia intends to amend its electricity Regulations later in 2004, including a change to enable electrical engineers to undertake electrical work previously available to electricians only.) Because Western Australia's appropriately constituted review found that the restrictions in the Electricity Act and associated Regulations were in the public interest, the Council assesses Western Australia as having met its CPA clause 5 obligations.

Gas Standards Act 1972
Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999

In Western Australia, the Gas Standards Act and the Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 provide that only a person with the appropriate gasfitter's licence may carry out gasfitting work on a consumer's gas installation. The Act and Regulations deal with the licensing of gasfitters, registration, entry requirements (knowledge and skills, and a 'fit and proper' person's test) and the reservation of practice.

The 2003 NCP assessment found that review and reform activity in this area was incomplete. In March 2004 the government endorsed the review of the legislation which concluded that the restrictions on gasfitters (relating to competency and behaviour) are in the public interest. In its 2004 NCP annual report to the Council, the government noted that it was reviewing the competitive impact of requirements relating to the safety manufacturing standards of gas appliances. Western Australian officials subsequently informed the Council that the requirements do not restrict competition.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

Painters Registration Act 1961

The first review of Western Australia's Painters Registration Act found that the current system of mandatory licensing of registered painters is too restrictive and should be removed. The review proposed negative licensing to support a certification system, whereby persons who do not adhere to basic standards of commercial conduct are removed from the industry.

The government was concerned about the rigour of the first review and initiated a second review. This review had not been completed when the 2003 NCP assessment was finalised, and the Council found that review and reform activity was incomplete. The government subsequently endorsed the second review in October 2003. The review recommended that the government remove the regulation of 'do-it-yourself' painting and reduce or remove licensing requirements for certain market segments. It found that the registration of painters minimises transaction costs for consumers in locating competent painters, protects the security of householders, reduces unscrupulous behaviour and promotes apprenticeships. However, registration also involves administration costs that painters pass on to consumers, and restricts entry to the industry (this latter cost was not quantified). The review argued that the benefits of registration exceed the costs.

The Council notes for the record its reservations about the review findings that the benefits exceed the costs. Nevertheless, it assesses that Western Australia has met its CPA clause 5 obligations in this area.

15 South Australia

A1 Agricultural commodities

Barley Marketing Act 1993

The National Competition Council's 2003 National Competition Policy (NCP) assessment found that South Australia had not met its Competition Principles Agreement (CPA) clause 5 obligations arising from the Barley Marketing Act because the 2003 NCP review had not shown that the barley export monopoly was in the public interest, and the monopoly remained to be reformed. On 30 June 2004 the South Australian Government introduced the Barley Exporting Bill to Parliament. The Bill would remove the barley export monopoly by repealing the Barley Marketing Act. It would license the bulk export of barley, issuing the only main export licence to the existing monopoly exporter, ABB Grain Export Limited. Other grain exporters would be entitled to apply to a licensing authority for special export licences. The authority would consult the main export licence holder and not grant a licence if the proposed export is likely to have a significant impact on a price premium earned by the main licence holder through the exercise of market power. The licensing authority would be established or appointed by regulation following consultation with interested parties. The Bill makes no provision for ministerial directions to the authority, but the authority would be obliged to take into account any advice given by an advisory committee appointed by the Minister and referred to the licensing authority by the Minister. Decisions of the licensing authority to refuse or cancel a licence, or to impose or vary a condition on a licence, would be open to appeal to the District Court.

The Council welcomes the progress made by South Australia towards a more competitive barley export market. However, it assesses that South Australia is still to meet its related CPA clause 5 obligations. South Australia will have met these obligations when it has:

- passed and proclaimed the Barley Exporting Bill
- made Regulations that impose the minimum necessary practical restraints on the availability of special export licences.

In assessing the Regulations, the Council will be looking at the independence of the licensing authority, the fees payable by applicants and any provisions that bear on the timeliness of the licensing process, the conditions that the authority may impose on licences, and the matters that the authority must take into account in deciding whether to grant a licence.

Chicken Meat Industry Act 2003

In its 2003 NCP assessment, the Council found that South Australia had not met its CPA clause 5 obligations because it had passed new legislation, the Chicken Meat Industry Act, without showing sufficient evidence of a public interest case for the Act's restrictions on competition among growers.

As passed, the Act assisted chicken growers by requiring that individual processors allow each of their growers the opportunity to join with their other growers to bargain collectively. The Act also provided for the compulsory mediation and arbitration of various disputes arising between each processor and its growers. It repealed the *Poultry Meat Industry Act 1969*, which had not been in operation since 1996.

The Council accepted that allowing growers the opportunity to bargain collectively with individual processors was in the public interest — this opportunity had been available to growers since 1996 under various Australian Competition and Consumer Commission (ACCC) authorisations. It did not consider, however, that the public interest was served by providing for the compulsory arbitration of disputes arising:

- in the course of collectively negotiating growing agreements
- when a processor did not offer a grower a new agreement to replace one about to expire.

The Council was not convinced by the State Government's claims that these restrictions on competition would benefit the community by improving relations between growers and processors, improving the accuracy of pricing, and ensuring industry rationalisation occurred at an appropriate pace. The Council also considered that compulsory arbitration was likely to increase the costs of forming and renewing commercial relationships. Ultimately, higher adjustment costs could result if supply capacity transfers out of South Australia to less regulated jurisdictions. Moreover, if other states responded by re-introducing significant restrictions on competition in their chicken meat industries, higher chicken meat prices could arise.

The Council considered that compulsory mediation of bargaining disputes would impose much lower costs and was sufficient to meet the objective of ensuring growers have an opportunity to bargain with their processor. It also considered that compulsory mediation and arbitration of contract nonrenewal disputes could be justified only as a form of adjustment assistance for existing growers, but should not be available to those who choose to enter the industry.

Following the 2003 NCP assessment, and consultations between the Council and the government, the South Australian Minister for Agriculture introduced a Bill to Parliament to amend the Act by removing:

- compulsory arbitration of collective bargaining disputes, but introducing compulsory mediation

- compulsory mediation and arbitration of nonrenewal disputes for growers who were not party to a collectively negotiated growing agreement when the amendment commenced.

The bill was passed on 23 July 2004 and the amended Act was proclaimed on 2 September 2004.

The Council assesses that South Australia has met its CPA clause 5 obligations arising from the Chicken Meat Industry Act.

A3 Fisheries

Fisheries Act 1982

The Council's 2003 NCP assessment found that South Australia had not met its CPA clause 5 obligations arising from the Fisheries Act. The Act contained some restrictions on competition, which the 2002 NCP review had not shown to be in the public interest and had recommended for reform or further evaluation. These restrictions were:

- the prohibition on any person from holding two or more fishery licences
- the prohibition in the Marine Scale, Lakes and Coorong fisheries on persons other than vessel masters from holding fishery licences
- the prohibitions on corporate and foreign ownership of fishery licences
- licence terms of one year
- various restrictions contained within schemes of management for specific fisheries, such as those on quota holdings and transfers, and on numbers of personnel.

Since the 2003 assessment, the government has removed the general prohibitions on the holding of two or more fishery licences and on the corporate ownership of licences (via amending regulations gazetted in February 2004), and some of the other lesser restrictions contained within schemes of management. The Government has also clarified that foreign ownership of fishery licences is not presently prohibited, although the Act allows for such limits to be regulated.

The government has also completed a more general review of the Act and is preparing a consultation draft of a new Fisheries Management Bill to replace it. This Bill will address some outstanding issues raised by the NCP review, particularly licence tenure and security. The government intends to introduce this Bill in 2005.

The government has retained, albeit with some relaxation, the restrictions on ownership of licences in the Marine Scale, Lakes and Coorong fisheries. Now

a person other than the vessel master may hold one licence in one of these fisheries. However, only a vessel master can hold more than one licence in one of these fisheries and another fishery. The government argues that these restrictions are in the public interest as they are necessary to limit fishing effort, and they provide economic and social benefits to rural coastal communities.

Importantly the government has not presented the Council with sufficient evidence to show that continued restrictions on the ownership of licences in the Marine Scale, Lakes and Coorong fisheries are in the public interest. These restrictions have potentially significant costs as they restrict entry to the industry and may hamper the realisation of any economies of scale available from holding two or more licences. The Council is not yet satisfied that there are no less restrictive alternatives to meet the objectives of limiting fishing effort and of supporting the economic and social health of rural coastal communities. The Council is also concerned that, following further review by fishery management committees, some restrictions remain within schemes of management, due to industry opposition to their removal, that may not be in the public interest (e.g. rock lobster pot limits). Lastly, addressing licence tenure and security awaits passage of the proposed Fisheries Management Bill.

The Council assesses that South Australia has not met its CPA clause 5 obligations arising from the Fisheries Act.

Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987

In 2003 the Council assessed that South Australia had not met its CPA clause 5 obligations arising from the Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act because the Act was still to be repealed as recommended by the NCP review. The Act aimed to avoid overfishing by providing for the cancellation of licences until there are no more than 10, the compensation of affected licence holders, and the contribution by remaining licence holders to the cost of compensation. This program has since been completed, with payment of the last contribution due.

Although the Act has not been repealed the Council considers that it no longer restricts competition and, therefore, that South Australia has met its CPA clause obligations arising from this Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (South Australia) Act 1995

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of these chemicals to the point

of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant South Australian legislation is the Agricultural and Veterinary Chemicals (South Australia) Act.

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed, and the Council thus assesses that South Australia has not met its CPA obligations in relation to this legislation.

Agricultural Chemicals Act 1955
Stock Foods Act 1941
Stock Medicines Act 1939

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

A national review examined 'control of use' legislation for agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. South Australia (along with New South Wales and the Northern Territory) conducted its own review.

South Australia's Parliament passed the *Agricultural and Veterinary Products (Control of Use) Act 2002* in August 2002. The Act repeals the Agricultural Chemicals Act, the Stock Foods Act and the Stock Medicines Act. The restrictions in the new Act were reviewed and found to be in the public interest. The Act and Regulations came into operation on 29 August 2004.

The Council assesses South Australia as having met its CPA obligations in relation to agvet chemicals 'control of use' legislation.

A6 Food

Dairy Industry Act 1992
Meat Hygiene Act 1994

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. The Council's 2003 NCP assessment reported that South Australia intended to model its dairy reforms on

Victorian legislation that had been assessed as meeting CPA obligations. At that time, South Australia indicated that amendments to the Meat Hygiene Act to implement review recommendations would be introduced in late 2003.

South Australia's Parliament passed the Primary Produce (Food Safety Schemes) Bill 2004 in the autumn 2004 session and the Bill was assented to on 1 July 2004. The Bill contains a section covering the production of dairy products in line with the NCP consistent Victorian model. Amendments to the Meat Hygiene Act to implement review recommendations were proclaimed on 29 July 2004.

The Council assesses South Australia as having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1985

South Australia's Veterinary Surgeons Act contains restrictions that include licensing of veterinary surgeons and hospitals, the reservation of practices and title, advertising restrictions, and controls on business names. The review of the Act, completed in May 2000, recommended retaining the provisions of the legislation relating to reservation of practice and title to registered veterinarians. The review recommended removing the provisions that prevented veterinarians from providing treatment through another person and prohibited companies practising in partnerships unless authorised by the Veterinary Surgeons Board. The review also recommended that the restrictions on advertising in the rules of conduct be removed. The Council's 2003 NCP assessment reported that the review of the Act was approved by Cabinet in September 2000, but that the government had yet to implement the recommended reforms.

The government subsequently introduced the Veterinary Practice Bill and Parliament passed it in October 2003. The Act, which is yet to be proclaimed, repeals the Veterinary Surgeons Act and implements the recommendations of the review. While the associated Regulations are unlikely to be finalised before early 2005, they will be concerned only with fees payable by veterinarians to the Veterinary Surgeons Board and other administrative matters that are not relevant to South Australia's compliance with its CPA clause 5 obligations.

The Council assesses South Australia as having met its CPA obligations in relation to veterinarians.

A9 Mining

Mining Act 1971
Mines and Works Inspection Act 1920
Opal Mining Act 1995

The Council's 2003 NCP assessment reported that South Australia was yet to complete its reforms in this area, despite completing the review of its major mining legislation (the Mining Act, the Mines and Works Inspection Act and the Opal Mining Act) in December 2002. The review recommended repealing s13 of the Opal Mining Act, which established the Major Working Area (an area of known opal diggings within the Coober Pedy precious stones field). Under s13, corporations cannot enter the Major Working Area to prospect or mine. The review process did not identify any net public benefits from this restriction and South Australia intends to introduce an amendment by 1 December 2004 to repeal s13.

The review recommended repealing the health and safety provisions in the Mines and Works Inspection Act because occupational health and safety legislation now deals with these matters. It also recommended incorporating the remaining provisions of the Act in other appropriate legislation (such as the Mining Act). After further discussions with South Australian officials, and based on information provided in the state's 2004 NCP annual report, the Council is satisfied that the review did not identify any competition restrictions in the Mines and Works Inspection Act and the Mining Act that require reform. On that basis, a compliance finding does not depend on South Australia's completion of the recommended reforms relating to occupational health and safety.

The Council assesses that South Australia:

- has not met its CPA obligations in relation to the Opal Mining Act because the government is still to complete its reform

- has met its CPA obligations in relation to the Mines and Works Inspection Act and the Mining Act.

B1 Taxis and hire cars

Passenger Transport Act 1994

Halliday–Burgan conducted an NCP review of the Passenger Transport Act in 1999. The review concluded that there is no need to change the Act because the government has the discretion to increase the number of taxi licences by 50 per year. The Council's 2002 NCP assessment stated that the existence of the legislative discretion was not sufficient for compliance with CPA clause 5

obligations. This finding was based on the fact that the government had not used this discretion between the 1999 review and mid-2002.

The number of general taxi licences in Adelaide has remained unchanged at around 920 since 2001. The number of wheelchair-accessible taxi licences increased from 68 in 2001 to 71 in 2004. The average value of taxi plates sold in the first half of 2004 was $156 000, an increase from an average of $137 000 in the first half of 2003. This increase suggests that taxi plates may be experiencing a growing scarcity value.

The shortage of taxis in Adelaide is indicated by a passenger survey conducted by the Consumers Association of South Australia in early 2003. Almost half of the respondents gave a low rating to taxi punctuality, and a large proportion was concerned about drivers' reluctance to accept short trips.

A mitigating factor, however, has been free entry to the hire car industry since 1991, subject to the payment of nonprohibitive fees for operator and vehicle accreditation. Hire cars have thus contributed to the supply of chauffeured passenger transport services. The number of 'metropolitan' category hire cars that operate in Adelaide and would offer some competition to taxis, has been fairly static at around 80–90 vehicles over the two years to June 2004. Despite the hire car de-restriction, the value of taxi plates and the survey results on service quality indicate that significant restrictions on competition remain. The government has informed the Council that it intends to review the taxi industry by 2006, but the review will not assess CPA clause 5 matters.

The Council thus confirms its 2003 NCP assessment that South Australia has not met its CPA clause 5 obligations in relation to taxis.

B2 Tow trucks

Motor Vehicles Act 1959

South Australia completed a review of the accident towing provisions in the Motor Vehicle Act and the Accident Towing Roster Scheme Regulations in 2000, but had not commenced its post-review consultation process at the time of the 2003 NCP assessment. It informed the Council that it intended to release the report for consultation with industry and key stakeholder groups in mid-2003, and to complete a draft Bill by August 2003.

In October 2003, South Australia released for public comment the report of the 2000 NCP review, which detailed a range of competition restrictions. The report is concerned with the Adelaide metropolitan area, which is divided into zones for the purposes of the accident towing industry. The Accident Towing Roster Review Committee determines the zones and the number of roster positions in each zone. The South Australian police allocate tow trucks to accident scenes according to the next available roster position for each zone.

The review report found that the roster system allows for quick and orderly removal of damaged vehicles from roads without undesirable behaviour by tow truck operators, and that these benefits are of significant value to the community. However, the review panel was concerned that the committee controls which companies occupy roster systems. It argued that 'there is no justification in terms of the competition principles for restricting entry to operators who meet the criteria for issue of a position, nor is there a justification for the retention of the zoning system simply as a means of sharing the available business' (Transport SA 2000, p. 15). The report recommended that there be no limitations on the number of operators who can apply to participate on the roster for a specific zone.

The government released the report for public comment in October 2003, and began consultations on the review report with the tow truck industry and key stakeholder groups in January 2004. In August 2004, South Australian officials told the Council that the consultation period had finished and that amendments to regulations will be made by the end of 2004. The government has released its response to the NCP review, indicating that it will accept the recommendation to remove limits on the number of operators who can participate on the accident towing roster for a particular zone. While retaining the roster system, the amendments to regulations will remove the Accident Towing Roster Review Committee's control of which companies appear on the roster. It will then be possible for any tow truck company to be on zone rosters, provided it satisfies certain quality and probity requirements. The committee will be abolished following the changes.

Because the amended regulations have not yet been introduced, the Council assesses that South Australia has not met its CPA obligations in relation to this legislation because the state is yet to complete its reforms.

B3 Dangerous goods

Dangerous Substances Act 1979

Under the South Australian Dangerous Substances Act, licences are required to keep and convey dangerous substances. In the 2003 NCP assessment, the Council determined that South Australia had not completed its review and reform activity in this area. At that time, South Australia proposed to introduce legislation that would be consistent with the national standards covering storage, the handling of dangerous goods and the transportation of explosives.

Following discussion with South Australian officials, the Council accepts that while further legislative change may be pending, the NCP review did not recommend any changes to the current legislation. On that basis, any future amendments will fall under the CPA clause 5(5) gatekeeping provisions (see chapter 4).

The Council thus assesses that South Australia has met its CPA obligations in relation to this Act.

B6 Ports and sea freight

Harbours and Navigation Act 1993

The Harbours and Navigation Act governs the operations of harbours and related facilities — namely, harbour management, charges, vessel registration and crewing, licensing of pilot services, and other vessel safety requirements. At the time the 2003 NCP assessment, South Australia had completed a review of the Act (in 1999), but noted that it was party to an intergovernmental agreement to develop nationally consistent legislation over the period to 2005 and that it intended to amend the legislation as changes are agreed at the national level. On that basis, the Council assessed the state's reforms in this area as being incomplete for the 2003 NCP assessment.

Following discussions with South Australia, the Council is satisfied that no reforms were required as a result of the Act's review. On that basis, the Council assesses that South Australia has met its CPA clause 5 obligations. (If the government amends the legislation in line with any changes resulting from an interjurisdictional agreement to develop nationally consistent legislation, this will be a CPA clause 5(5) matter.)

C1 Health professions

Chiropractors Act 1991 (chiropractors and osteopaths)

The South Australian review of the Chiropractors Act recommended removing ownership restrictions and amending practice reservations and the advertising code. In the 2003 NCP assessment, the Council assessed that South Australia had yet to address these matters (notwithstanding that the review recommendations satisfactorily addressed the competition concerns) so had not yet met its CPA clause 5 obligations in relation to chiropractors. At that time, South Australia advised that Cabinet had approved drafting of a Bill to implement these recommendations and, after consultation with stakeholders, approval would be sought to introduce the Bill to Parliament in the second half of 2003. To date, a Bill has not been introduced, but a draft Chiropractors and Osteopath Practice Bill 2004 is available for public comment.

The review also considered competition restrictions for osteopaths because the state registers osteopaths as chiropractors under the Act. In particular, it recommended that the issue of separate legislation be considered when the number of osteopaths has increased to make separate legislation viable.

Given advice from South Australia's Department of Premier and Cabinet that there are only five osteopaths in the state and approximately 25 registered as both a chiropractor and osteopath, the Council accepts the state's position to not provide separate registration at this stage.

Nonetheless, the presence of ownership and practice restrictions in the existing legislation means that material competition restrictions remain.

As South Australia has not yet implemented reforms, the Council confirms its earlier assessment that the state has yet to meet its CPA clause 5 obligations in relation to chiropractors and osteopaths.

Dentists Act 1984
Dental Practice Act 2001

In response to the 1998 review of the Dentists Act, South Australia passed a new Dental Practice Act. This Act implements most of the recommendations of the review, but did not implement the recommendation to remove all direct and indirect ownership restrictions. In the 2003 NCP assessment, the Council considered that South Australia had not made a convincing case that ownership restrictions were necessary to achieve its regulatory objectives. The Council considered, therefore, that the state had failed to meet its review and reform obligations in relation to this profession.

The ownership restrictions are subject to a power for the Governor to grant exemptions by proclamation. The state noted in its 2004 NCP annual report that all applications for exemptions received have been granted or are in the process of being considered.

Following the receipt of the state's NCP annual report, South Australia's Department of Premier and Cabinet advised that the government will amend the Act to remove ownership restrictions. These amendments will be based on the state's template Medical Practice Bill which will effectively remove ownership restrictions.

Given the pending reforms, the Council now assesses the state's progress in reforming dental practitioner legislation as incomplete. However, it notes that until reforms are implemented, the exercise of the current exemption provisions results in the ownership restriction not imposing significant costs on the community.

Medical Practitioners Act 1983

South Australia's 1999 review of the Medical Practitioners Act recommended removing ownership restrictions, among other things. The former government introduced amending legislation in May 2001 to implement the review's recommendations, but the Bill lapsed following the state elections. The current government aimed to introduce a new Bill in late 2003.

A new Medical Practice Bill 2004, if passed, will implement key review recommendations relating to the medical profession, including the removal of ownership restrictions.

However, because the legislation has not been passed by Parliament to date, the state has not yet met its CPA obligations in relation to this profession.

Optometrists Act 1920

South Australia's review of optometry regulation recommended removing restrictions on training providers and introducing a code of conduct. The Council's 2003 assessment considered that the review recommendations appeared consistent with the state's CPA obligations. However, because the state had not yet implemented optometry reforms, the Council assessed the state's progress in this area as being incomplete.

In the context of this assessment, the state has advised that the Optometry Practice Bill 2004 is currently before the Board for comment, prior to it being released for public consultation.

As the reforms have not been implemented, the Council confirms its earlier assessment that the state has not yet met its CPA clause 5 obligations in relation to this profession.

Pharmacy Act 1991

CoAG national processes for reviewing pharmacy regulation recommended removing restrictions on the number of pharmacies that a pharmacist can own and on friendly societies' ability to operate in the same way as other pharmacies (see chapter 19). Compliance with these requirements requires the state to remove these restrictions contained in the Pharmacy Act.

On 3 August 2004, South Australia received a letter from the Prime Minister which noted that the state will not attract competition payment deductions if it implemented similar reforms to that advised to New South Wales. The Prime Minister also stated that competition payments will not be contingent on whether the South Australian proposal to allow National Pharmacies to increase its ownership from 31 to 40 pharmacies was pursued.

On 15 September 2004, the Council received advice from South Australia that its Parliamentary Counsel was currently drafting amendments to the Pharmacy Act consistent with the advice from the Prime Minister to:

- increase the number of pharmacies a pharmacist can own from four to five
- allow new friendly societies to enter the South Australian market with a maximum number of six for each society

- increase the number of pharmacies that National Pharmacies may own from 31 to 40.

These reforms, if implemented, will improve competition in the pharmacy industry by removing restrictions on new friendly society entrants and by increasing the number of pharmacies both pharmacists and friendly societies can own.

However, these proposed reforms fall short of those required by CoAG national review processes as CoAG outcomes require that restrictions on the number of pharmacies a pharmacist can own be removed.

South Australia has not implemented pharmacy regulation reforms consistent with CoAG requirements to date, so it has not yet met its CPA obligations in relation to this profession.

Physiotherapists Act 1991

South Australia completed a review of the Physiotherapists Act in February 1999. The review recommendations included replacing broad practice restrictions with core practice restrictions and removing restrictions on the ownership of physiotherapy practices. At the time of the 2003 NCP assessment, the government indicated that it expected to release a draft Bill for consultation in late 2003.

In the context of this assessment, the state has advised that Cabinet approved drafting of a Bill to implement these recommendations. Following consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

Given the lack of progress since the 2003 NCP Assessment, the Council reaffirms its assessment that South Australia is yet to meet its CPA clause 5 obligations in relation to this legislation.

Chiropodists Act 1950

The recommendations from the 1999 review of South Australia's Chiropodists Act include limiting practice reservation and removing ownership restrictions. Following South Australia's 2004 NCP Annual Report which advised that a Bill implementing review recommendations was expected to be introduced to Parliament later in 2004, the Podiatry Practice Bill 2004 was subsequently introduced on 30 June 2004. The Council expects this will also result in changes to codes of professional conduct developed by the Board in line with review recommendations.

However, as Parliament has not yet passed the legislation, the Council confirms its 2003 assessment that South Australia has yet to meet its CPA clause 5 obligations in relation to this legislation.

Psychological Practices Act 1973

The South Australian review of the Psychological Practices Act was completed in 1999. It recommended removing advertising and practice restrictions. The state has advised that Cabinet approved drafting of a Bill to implement these recommendations. Following consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

However, given the lack of progress since the 2003 NCP assessment, the Council confirms its assessment that South Australia has yet to meet its CPA clause 5 obligations in relation to this legislation.

Occupational Therapists Act 1974

The Occupational Therapists Act's key restriction is title protection for occupational therapists. Title protection can restrict competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the qualifications, character tests and fees required of applicants for registration restrict entry to the profession of occupational therapy and potentially weaken competition among occupational therapists.

South Australia's review of occupational therapy legislation recommended continuing to preserve title restrictions as a means of overcoming information asymmetry, particularly given that some consumers are vulnerable or socially disadvantaged. It also noted that title protection and the related registration system provide consumers and other professionals with a mechanism for lodging complaints against unprofessional and incompetent occupational therapists. In its 2004 NCP annual report, South Australia has advised it will retain title restriction, pending amendments to occupational therapy legislation.

Without a robust public interest case, however, the Council does not accept the above arguments because there does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as common law, the *Trade Practices Act 1974* and independent health complaints bodies. The Council notes too that the South Australian Parliament has passed the Health and Community Services Complaints Bill 2004, which will provide the state with an independent body to which complaints can be made about occupational therapists. While the Council accepts that the Complaints Commissioner under the Act cannot discipline a practitioner, it notes that the Commissioner can conciliate disputes and thereby contribute to addressing consumer concerns.

In addition, many occupational therapists are employed in the public sector. Further, consumers are unlikely to seek occupational therapy services

without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it notes that the costs of retaining the restriction are not significant because nonregistrants can still use unrestricted titles. In the 2003 NCP assessment, the Council assessed that South Australia's proposed legislative changes, which include retaining title protection, would not comply with its CPA obligations. Given that South Australia has formally advised that it will retain title restriction, the Council reconfirms that the state will not meet its CPA obligations when it amends its occupational therapists legislation.

C2 Drugs, poisons and controlled substances

Controlled Substances Act 1984

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session.

South Australia has not yet implemented the Galbally Review recommendations, and has advised that it will consider the report in the context of interjurisdictional processes.

The Council accepts that jurisdictions are considering the Galbally report at the national level through CoAG. However, because Galbally reforms have not yet been implemented in South Australia, the state has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act 1981

The South Australian Government passed the *Legal Practitioners (Miscellaneous) Amendment Act 2003*, which implemented some NCP reforms, including:

- removing Australian residency requirements for applicants seeking admission as a barrister or solicitor
- opening up some reserved areas of work, with a provision to allow land agents to draft leases above rental values of $25 000 for residential and $100 000 for nonresidential leases.

South Australia has implemented most of the recommendations from its NCP review of the legal profession, except for permitting multidisciplinary practices. This latter issue will be examined, including for ethical impacts, as part of implementing national model laws outcomes (see chapter 19). Existing restrictions on professional indemnity insurance will also be considered in this context.

The state has not, therefore, yet met its CPA obligations in relation to the legal profession.

E Other professions

Other licensed occupations

Travel Agents Act 1986

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

South Australia has approved the recommended increase in the exemption threshold level and is drafting Regulations to implement this change. It has decided not to remove the Crown exemption for the South Australian Tourism Commission because the commission does not engage in competitive commercial activity.

South Australia has not met its CPA obligations in relation to travel agents legislation because it has not completed its reforms.

Conveyancers Act 1994

South Australia's Conveyancers Act imposes controls on entry to the profession. A 1999 review of the Act found that the restrictions on the ownership of incorporated conveyancing businesses could not be justified. It noted that the restrictions inhibit the development of multidisciplinary practices, which may offer economies of scale and flexibility of service provision. It recommended replacing the ownership restrictions with provisions that require the proper management and supervision of a registered incorporated conveyancer by a registered conveyancer, and to make it an offence for directors to unduly influence conveyancers in the performance of their duties. The review also recommended removing the requirement that the sole object of an incorporated conveyancer be carrying on a business as a conveyancer.

A Bill to remove the ownership restrictions and prohibit undue influence was introduced to Parliament in late 2000, but lapsed with the calling of the election. At the time of the 2003 NCP assessment, the government was consulting with stakeholders and intended to introduce new legislation in late 2003.

Since the 2003 NCP assessment, legislation changing ownership restrictions passed through both houses of Parliament in May 2004. The Council thus assesses that South Australia has met its CPA obligations in this area.

Employment Agents Registration Act 1993

South Australia completed the review of the Employment Agents Registration Act in October 2000. The review recommended that:

- current licensing arrangements be removed from the Act
- employment agents be precluded from charging a fee to a jobseeker simply because the employment agent has the jobseeker on its books, or is seeking employment on behalf of that person
- employment agents be prohibited from charging a recurring fee to a jobseeker or a fee for engagement of the jobseeker
- the Act requires the development of, and adherence to, an industry code of conduct, and that appropriate penalties be determined for breaches of the Act.

The government is consulting with the industry to identify the optimal method of addressing these concerns and achieving an approach that is consistent with that of other jurisdictions. This approach may include a code of practice and a reduced level of legislation. South Australia anticipates that this matter will be resolved by the end of 2004.

Because reform is incomplete, the Council assesses South Australia as not having met its CPA obligations in this area. The Council notes that the impact of the restrictions is unlikely to be significant because the registration fee is only $10.

Hairdressers Act 1988

South Australia's Hairdressers Act regulates entry to hairdressing by prescribing the required qualifications. An NCP review of the Act in December 1999 found the entry restrictions to be justified for now — given the health and safety risks, the risks of substandard work, and the transaction costs facing consumers seeking to enforce their rights — but probably not in the longer term. It recommended reducing the scope of work reserved for hairdressers and further reviewing the Act in three years, with a view to its repeal.

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to legislation regulating hairdressers, because the then government had endorsed the review recommendations and passed the recommended legislative amendments. To ensure it remains compliant, the current government needs to schedule a further review. South Australia has indicated that it will commence another review in 2005.

The Council thus confirms its 2001 NCP assessment but notes that this is contingent on the further foreshadowed review being undertaken.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Motor Vehicles Act 1959

In South Australia, a statutory monopoly provides compulsory third party insurance. South Australia conducted a second review of this insurance type in 1999, reversing the 1998 review's recommendation that multiple provision be introduced. The government confirmed in September 2001 that the Motor Accident Commission would remain the sole provider of compulsory third party insurance in South Australia and South Australia's 2003 and 2004 NCP annual reports reiterated the state's public interest case for retaining the single statutory provider — that is, that its statutory monopoly scheme allows cheaper premiums and that only such arrangements can achieve the objectives of universal coverage, affordability and fair claims settlements. Some minor legislative amendments came into force in October 2002.

For reasons outlined in chapter 9, the Council has not assessed South Australia's compliance with its CPA obligations in this area for the 2004 NCP assessment.

Workers Rehabilitation and Compensation Act 1986

In South Australia, a statutory monopoly provides workers compensation insurance. An inter-agency steering committee completed an NCP review in mid-2002 that identified restrictions to competition but recommended only minor changes to the Workers Rehabilitation and Compensation Act. The review argued that statutory monopoly provision has net public benefits. The government is considering the review in the context of two separate investigation reports provided to the government in late 2002 and early 2003 — one relating to governance arrangements in the WorkCover Corporation and one relating to workers' compensation and occupational health and safety systems.

For reasons outlined in chapter 9, the Council has not assessed South Australia's compliance with its CPA obligations in this area for the 2004 NCP assessment.

F2 Superannuation

Southern State Superannuation Act 1987

This Act establishes the public sector superannuation arrangements in South Australia. Under the Act, public sector employees cannot choose their superannuation provider for employer contributions. The main outcomes of the restricted choice of fund provider are that contributors cannot take advantage of higher returns that other superannuation funds may provide, and the market presence of alternative service providers is constrained. South Australia's Crown Solicitor advised the government in 1999, after a 'desktop review', that the anticompetitive effect of the restriction on fund provider is negligible because Funds SA (previously Super SA) allows competition for funds management.

South Australia has since commented that Funds SA offers advantages in insurance cover, low administration fees, a choice of investment strategy and has the lowest administration costs of all Australian superannuation schemes. South Australia considers that the outsourcing of funds generates benefits from the competition between funds managers to obtain good returns, and referred to the recent above-average returns of the fund. South Australia contends, therefore, that the restricted choice of fund provider therefore has no material impact.

The absence of a full NCP review that considers the CPA clause 5 obligations comprehensively has presented the Council with difficulties in assessing South Australia's compliance with its CPA obligations. The Council notes, however, that reviews of similar arrangements in other jurisdictions have concluded that the benefits of the arrangements for public servants exceed the costs.

Based on the evidence provided by South Australia on the impacts of its superannuation legislation arrangements, and the experience of reviews in other jurisdictions, the Council concludes that South Australia has complied with its CPA obligations for this legislation.

G1 Shop trading hours

Shop Trading Hours Act 1977

Prior to 2003, South Australia's Shop Trading Hours Act imposed complex restrictions on trading hours that discriminated between retailers according to their size, location and products sold. Most notably, the Act limited evening and Sunday trading by larger general retailers and allowed longer trading hours for retailers located in the central business district and Glenelg tourist precincts.

In June 2003 the government passed legislation to substantially reform trading hours. Commencing in July 2003, Sunday trading was extended to suburban areas between 11 am and 5 pm, and week night shopping was allowed until 9 pm in all areas.

In the 2003 NCP assessment, the Council noted that South Australia had implemented significant reforms, but that some discrimination against larger retailers remained. Unlike their smaller, specialist competitors, larger general retailers retailers cannot open after 9 pm on weekdays, 6 pm on Saturdays and 5 pm on Sundays. The government has not acted on these remaining restrictions or provided a public interest case to support them.

The government's reforms mean the cost of the remaining restrictions is relatively small compared to the situation before July 2003. Nevertheless, the government has not provided a public interest case for the remaining restrictions. Accordingly, the Council retains its 2003 assessment that South Australia has not complied with its CPA clause 5 obligations in this area.

G2 Liquor licensing

Liquor Licensing Act 1997 (retaining certain restrictions from the earlier *Liquor Licensing Act 1985*)

South Australia completed its NCP review of the 1985 Act in 1996 and removed a number of restrictions in 1997. It retained, however, the proof-of-need test and the requirement that packaged liquor be sold only from premises exclusively devoted to the sale of liquor. The review recommended retaining these provisions and conducting a further review after three or four years, when evidence of outcomes in less regulated jurisdictions would be available. In the 2003 NCP assessment, the Council assessed the exclusive premises requirement as complying with CPA obligations.

However, South Australia is yet to complete the review and reform of its needs test. A team drawn from the Attorney-General's department is conducting a review against terms of reference that reflect the CPA clause 5. It published an issues paper in November 2002, invited submissions and published a draft report in April 2003. The draft report described the needs test arrangements as a serious competition restriction that public benefits cannot justify and that should be abolished. The government is considering the report's recommendation.

Because South Australia has not completed its review and reform activity, the Council assesses it as having not complied with its CPA clause 5 obligations in relation to liquor licensing.

G3 Petrol retailing

Petrol Products Regulation Act 1995

South Australia's Petrol Products Regulation Act allows the relevant Minister to withhold new retail petroleum licences if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. South Australia completed a review of the Act in 2001, finding that the Act created a barrier to entry and protected industry participants without providing a net public benefit.

The government accepted the findings of the review and reported in 2003 that it was drafting legislation giving effect to the recommendations. It intended to phase out the current restrictions to provide industry participants with time to adjust their business plans for the entry restriction's removal, which will occur at a time of already rapid change in the industry. The legislation is not expected to take effect until 31 December 2004.

The Council accepts the need for a phased reform, but notes that South Australia is yet to pass legislation to effect the foreshadowed reforms. It thus retains its 2003 assessment that South Australia has not yet complied with its CPA obligations in relation to petrol retailing.

H3 Trade measurement legislation

Trade Measurement Act 1993
Trade Measurement Administration Act 1993

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

Because the national review and reform of trade measurement legislation has not been completed, the states and territories involved (including South Australia) have yet to meet their CPA obligations in relation to trade measurement legislation.

In addition to the national review of trade measurement legislation, governments also listed their trade measurement (administration) legislation for review. South Australia is awaiting the national response before implementing reforms.

The Council thus assesses South Australia as not having met its CPA clause 5 obligations because it has not completed its reforms for either Act.

I1 Child care

Children's Protection Act 1993

In its 2003 NCP assessment, the Council noted that the review of the Children's Protection Act found that restrictions in the Act are unjustified and may limit the ability of a court to appoint an officer best suited to the needs of the child. Cabinet approved drafting amendments in August 2000.

South Australia's 2004 NCP annual report to the Council provided a robust case that the Act does not unnecessarily restrict competition. The Council agrees that the review provided no evidence that the relevant section of the Act restricts competition; rather, the restriction may not be in the best interests of the child. This is a social policy issue, rather than a competition matter.

The Council accepts that the Act does not contain restrictions on competition. It thus assesses that South Australia as having met its CPA clause 5 obligations in this area.

I2 Gambling

Authorised Betting Operations Act 2000

South Australia repealed the *Racing Act 1976* and developed replacement legislation (the Authorised Betting Operations Act) which is being considered as part of the state's omnibus gambling legislation review. The Act contains probity, harm minimisation and consumer protection restrictions that the review supported. In addition, the review recommended:

- removing the exclusion of the major betting operations licensee from conducting fixed odds betting on races
- removing the restriction that bookmakers cannot be a body corporate
- removing minimum telephone bet limits for bookmakers
- clarifying the criteria for issuing permits to bookmakers.

The phase-out period for the removal of minimum telephone bets was completed on 1 July 2004. In May 2004 a Bill was passed to amend the Act to allow the provision of fixed odds betting for the TAB, allow bookmakers to be a body corporate and clarify criteria for issuing permits to bookmakers.

The Council thus assesses South Australia as having complied with its CPA obligations in relation to racing and betting legislation.

State Lotteries Act 1966

South Australia reviewed lottery legislation as part of its omnibus review of gambling legislation. The review found that the state-operated Lotteries Commission does not have exclusivity in a technical sense, but enjoys market dominance that is not dissimilar to exclusivity. The review recommended maintaining the current arrangements, and the government accepted the review recommendation, stating that the availability and terms of lottery products through the Lotteries Commission are adequate and that the community obtains a financial benefit from the current arrangements.

In its 2003 NCP assessment, the Council assessed South Australia as not having met its CPA obligations in relation to lotteries legislation because it considered that the government's public benefit arguments do not support indefinitely retaining effective exclusivity for the Lotteries Commission. (The review's position and the Council's views can be found in chapter 9 of the 2003 assessment.)

In the absence of further developments, the Council maintains its 2003 assessment that South Australia has not met its CPA obligations in this area.

Gaming Machines Act 1992

South Australia considered its Gaming Machines Act as part of the omnibus review of its gambling legislation, which reported in 2003. Gaming machines at the Adelaide Casino are regulated under the *Casino Act 1977* and the Casino Approved Licensing Agreement.

The review found that:

- the restriction on gaming machine licences being issued to hotels and clubs only is justified as a harm minimisation measure
- the role of the State Supply Board as single gaming machine supplier and service licensee should be removed and a more competitive market structure should be developed
- a scheme enabling the transfer between venues of the right to operate gaming machines (without breaching the venue cap) should be introduced.

In its 2003 NCP assessment, the Council accepted the government's view that the board's role as the single *supplier* of machines has public benefits. (However, the government concurred with the review finding that a more competitive arrangement should replace the State Supply Board's monopoly on *service* provision and introduced amendments into Parliament in May 2004.)

The Council also noted that the government had not responded to the issue of transferability of gaming machines within the existing cap arrangements. Legislation to give effect to a transfer system has been drafted and will need to be considered by Parliament before the current freeze on gaming machine numbers expires on 15 December 2004. After lapsing when Parliament was prorogued following the last sitting, the government has re-introduced the Gaming Machines (Miscellaneous) Amendment Bill 2004 into Parliament. The Bill contains provisions to introduce transferability of gaming machines and to abolish the exclusive gaming machine service licence. The Bill is scheduled for passing by 14 December 2004.

Because South Australia is yet to complete its reforms, the Council assesses it as not having complied with its CPA obligations in relation to gaming machines.

Lottery and Gaming Act 1936

South Australia regulates minor gambling under the Lottery and Gaming Act. The Act authorises fundraising and trade promotion lotteries, bingo and sweepstakes, and requires licences when prizes in these activities exceed given amounts. The Act was included in South Australia's omnibus review of its gambling legislation. The review reported in March 2003 and found that the legislation protects consumers by ensuring the probity and integrity of gambling activities, but suggested the following minor amendments:

- Participation in bingo and the purchase of instant lottery tickets should be restricted to individuals aged 18 years and over.

- Sweepstakes and Calcutta sweepstakes should be conducted only on events that the Independent Gambling Authority approved for this purpose.

The government concurred with the review findings, but noted that the age limit for participation in bingo and instant lottery tickets should be the same as that for the sale of SA Lotteries products (16 years). The lotteries age limit is before the Parliament for consideration. While it may be possible to construct an incidental competition impact deriving from different age limits applying for the purchase of minor gambling, the Council considers that this impact is primarily a social policy matter.

Despite some incomplete reform activity in response to the omnibus review, the Council assesses that South Australia has met its CPA obligations in relation to minor gambling.

J3 Building occupations

Architects Act 1939

A national review of state and territory legislation regulating the architectural profession was completed in 2002 (see chapter 19).

The South Australian Government had not introduced a Bill to amend the Architects Act at the time of the 2003 NCP assessment, and the Council found that review and reform activity was incomplete. South Australia now expects to introduce such an amending Bill to Parliament in November 2004. The amendments will remove the anticompetitive elements, including provisions restricting the ownership of architectural companies and limiting advertising.

The Council assesses South Australia as not having met its CPA clause 5 obligations because the state has not yet completed the reform process.

Survey Act 1992

The Survey Act contained competition restrictions that related to the licensing, registration, entry requirements, reservation of title (and derivatives), reservation of practice, disciplinary processes, business conduct (including ownership restrictions) and business licensing of surveyors. A review was completed in 1999, and the review report was released in 2002. It recommended removing restrictions on companies and partnerships, and adding new provisions to make it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner. When the Council finalised the 2003 NCP assessment, the government had not introduced a Bill to Parliament containing these reforms, so the Council concluded that review and reform activity was incomplete. The government subsequently introduced such a Bill, which Parliament passed in late 2003. The legislation came into operation on 1 April 2004.

The Council thus assesses that South Australia has met its CPA clause 5 obligations in this area.

Land Valuers Act 1994

South Australia's Land Valuers Act involves negative licensing and disciplinary provisions aimed at ensuring consumer protection. These arrangements work by excluding valuers deemed to have acted illegally or improperly. South Australia's NCP review of the Act found the regulation of land valuers in this way to be justified, with consumers being at risk of significant financial loss if valuers are incompetent, negligent or dishonest. It

recommended that the Act retain the requirement for land valuers to hold prescribed qualifications. The government endorsed this recommendation.

In the 2003 NCP assessment, the Council reported that the review panel concluded that postgraduate requirements are too onerous and that the government should broaden the number and type of acceptable qualifications. The government advised at the time that it was awaiting approval of a national training package, after which South Australia would review the prescribed qualifications for valuers so as to prescribe core competencies rather than qualifications. The national review of valuer competencies was scheduled to be completed in 2005. The Council thus assessed review and reform activity as being incomplete.

Subsequently, South Australian officials have advised the Council that its NCP review of the Land Valuers Act recommended a *consideration* of whether to remove the completion of subjects other than the professional sequence from the training requirements in all postgraduate courses; the review panel did not *require* changes to postgraduate requirements. South Australia has clarified that any changes that it may make to required valuer qualifications after the national review is completed would be separate from the NCP review.

The Council assesses that South Australia has met its CPA clause 5 obligations, because the NCP review justified retaining the restrictions relating to prescribed qualifications.

Building Work Contractors Act 1995

This Act prescribes licensing, registration, entry requirements, the reservation of practice, disciplinary processes and business conduct restrictions that apply to builders and some tradespeople. South Australia completed a review of the Act in 2001, which recommended that the government retain the licensing and registration provisions.

South Australia has advised that the final report released by the government omitted the part of the review dealing with the financial resources requirements for contractors and with mandatory building indemnity insurance. These areas were referred back to the review panel for reconsideration in light of the collapse of HIH, one of only two providers of building indemnity insurance in South Australia. A supplementary issues paper, dealing with financial and insurance requirements, was released for public and industry comment. However, this process was overtaken by the commissioning and completion of a national review dealing with the same issues. A national working party is now developing recommendations for a package of nationally consistent reforms to building legislation, aimed at reducing building disputes and indemnity insurance claims. The financial resources and reputation requirements in the Act are thus likely to be increased rather than decreased as a result of this process.

In the 2003 NCP assessment, the Council assessed South Australia's review and reform of the Building Work Contractors Act as being incomplete because South Australia was awaiting the national working party's recommendations. Following discussions with South Australian officials, the Council accepts that the scope of the NCP review was affected by the subsequent establishment of the national working party, and that any consequent increases in financial and reputation requirements will be assessed under the CPA clause 5(5) gatekeeping provisions. By retaining the licensing and registration provisions in the Act, South Australia has acted in accord with the NCP review.

The Council thus assesses South Australia as having met its CPA clause 5 obligations. (Gatekeeping processes will apply to changes in financial requirements placed on licensees as a result of the national review.)

16 Tasmania

A3 Fisheries

Marine Farming Planning Act 1995

The Marine Farming Planning Act prohibits marine farming outside of declared zones and provides for the Minister to allocate, via leases, area within declared zones to persons wishing to engage in marine farming. Under the Act, orders may be made in response to threats to farming operations and public health and safety.

In its 2003 National Competition Policy (NCP) assessment, the Council assessed that Tasmania had not met its Competition Policy Agreement (CPA) clause 5 obligations in relation to the Marine Farming Planning Act. The Council considered the review had not adequately demonstrated a public interest case for continuing to restrict entry into the marine farming industry by limiting applications for marine farm leases to those invited by the Minister to apply, and allowing the Minister to decide the criteria for allocating leases among applicants.

Since the 2003 NCP assessment, Tasmania has demonstrated to the Council that the lease allocation process is open and competitive in practice. A statutory body, the Board of Advice and Reference, independently administers the process. It is appointed by the Minister and comprises a qualified legal practitioner, a person experienced in the industry, and a person experienced in business. The board calls for expressions of interest in marine farming leases (via advertising in Tasmania's major newspapers), and the Minister then invites firm applications from those expressions recommended by the board. The board assesses applications against predetermined selection criteria, including the amount tendered, and recommends to the Minister which applications to approve. The Minister has thus far accepted all recommendations of the board. Decisions of Ministers are open to appeal to the Resource Management and Planning Appeal Tribunal. There have been no appeals.

The Council now accepts that the Act, while not prescribing an open and competitive process for allocating marine farm leases, is not restricting competition in practice. It thus assesses that Tasmania has met its CPA clause 5 obligations arising from the Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Tasmania) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Tasmanian legislation is the Agricultural and Veterinary Chemicals (Tasmania) Act.

The Australian Government Acts were subject to a national review (see Chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed, and the Council thus assesses Tasmania as not having met its CPA obligations in relation to its legislation.

Agricultural and Veterinary Chemicals (Control of Use Act) Act 1995

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

A national review examined 'control of use' legislation in Victoria, Queensland, Western Australia and Tasmania. Tasmania incorporated the review recommendations into the *Agricultural and Veterinary Chemicals (Control of Use) Amendment Act 2002*, which Parliament passed in May 2003. The Act removes the requirement for a permit for low risk off-label use of agricultural chemicals, and limits the exemption of pharmaceutical chemists when they are acting under the instructions of a veterinary surgeon.

Tasmania has completed review and reform activity as far as possible. The Council assesses Tasmania as having complied with its CPA obligations in this area while noting that the report of a national working party examining licensing conditions for aerial spraying businesses may require further legislative change.

A6 Food

Food Act 1998

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. In November 2000, the Council of Australian Governments (CoAG) signed an Intergovernmental Food Regulation Agreement. Under the agreement, the states and territories undertook to make their food legislation consistent with the core provisions of the Model Food Act within 12 months. The core provisions relate mainly to food handling offences and the adoption of the Food Standards Code. Adoption of the noncore provisions is voluntary. States and territories may also retain provisions in their legislation that are not in conflict with the enacted provisions of the Model Food Act.

Tasmania repealed its *Public Health Act 1962* and replaced it with the *Food Act 1998*. Following developments at the national level, Tasmania replaced the 1998 Act with the *Food Act 2003*, which is based on the model food legislation. The Act came into operation in October 2003.

The Council assesses Tasmania as having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1987

Tasmania completed a minor review of its Veterinary Surgeons Act in February 2000. The review recommended that the Veterinary Board of Tasmania continue to approve educational qualifications and training courses, and regulate practice. The government retained mandatory registration for veterinary surgeons and specialists, and a requirement to keep records. It removed, however, several restrictions on bodies corporate providing veterinary services, via the *Veterinary Surgeons Amendment Act 2002* that came into effect on 1 September 2002.

In its 2003 NCP assessment, the Council expressed concern that Tasmania's NCP review did not consider the composition of Tasmania's Veterinary Board, which consists of five members as follows:

- three members who must be registered veterinary surgeons and who are nominated by the Australian Veterinary Association (Tasmanian Division)

- one member who is an officer of the relevant department and a registered veterinary surgeon, and who is nominated by the Secretary of the department

- one member who is nominated by the Minister.

The Council therefore assessed that Tasmania had not met its CPA obligations.

While the Council considers that broader representation of community interests on the board would be desirable, it accepts the view of Tasmanian officials that the statutory obligations on the Veterinary Board prevent it from implementing anticompetitive measures that would not meet the objectives of the Act.

Because Tasmania has completed significant reforms to the Veterinary Surgeons Act, the Council assesses it as having complied with its CPA obligations in this area.

B1 Taxis and hire cars

Taxi and Luxury Hire Car Industries Act 1995

The Taxi and Hire Car Industries Act allowed the Tasmanian Transport Commission to issue new taxi licences when values exceeded a 'capped value' set by regulation. Tasmania's 2000 NCP review recommended the annual issue of new licences (at a level of 5 per cent of existing licences) via a tender. Until early 2004 no such tender had been held, and taxi numbers had been stagnant for several years. Tasmania allows unlimited entry of hire cars, subject to a $5000 entry fee. At the time of the 2003 NCP assessment, the government had not considered its response to the 2000 NCP review, and the Council assessed that Tasmania's taxi reforms were incomplete.

The Tasmanian Government introduced the Taxi and Luxury Hire Car Amendment Bill to Parliament on 21 October 2003, and the Bill was passed in early December 2003. The government gazetted the amendment Act and Regulations on 17 March 2004. This legislation provides for the Transport Commission to make available by tender, in each 'taxi area' on an annual basis from late 2005 or early 2006, an additional number of perpetual taxi licences equivalent to 5 per cent of the number of existing perpetual taxi licences, or one additional perpetual taxi licence, whichever is the greater. No additional taxi plates will be made available if no bids are equivalent to the Valuer-General's assessed market value for each taxi area. If tender bids are strong, on the other hand, and the average tender price for an area exceeds the average market value by 10 per cent and all available licences for that area are sold, then the legislation requires the Transport Commission to make available a further 5 per cent additional licences for sale by tender.

Regulations associated with the legislation will establish the standard fare as a maximum fare and enable taxi operators to apply to the Transport Commission for approval of an alternative lower fare. If approval is given, the

operators could display this fare on the outside of their cabs, thus establishing the potential for price competition at ranks and elsewhere.

The legislation will also result in the Commission releasing additional wheelchair-accessible taxi licences in accordance with a schedule in the legislation that involves 20 additional licences of this type in Hobart over the first two years (2004 and 2005), nine in Launceston, two in Devonport and two in Burnie. The government advertised for expressions of interest in 16 new wheelchair-accessible taxi licences in late March 2004, and received applications for 15. These taxis will carry able-bodied passengers for about 90 per cent of their trips, and thus their contribution to the supply of taxi services will be significant. The amending legislation provides for additional wheelchair-accessible taxi licences to be issued after the first two years if the Transport Commission considers that these taxis' response times are not equivalent to those of perpetual taxis in a particular area.

In the second reading speech delivered in the House of Assembly on 2 December 2003, the Minister for Infrastructure stated that the government would establish a taxi industry working party to monitor the effect of the additional perpetual licences and discount fares on price and service competition, and the role of radio rooms in promoting competition, innovative practices and new technology.

The amendments to the taxi legislation that the Tasmanian Parliament passed in late 2003 will deliver an increased supply of taxi services. Over the two years to late 2005 or early 2006, when new perpetual plates in the main cities will be put to tender and may be taken up, the increased supply will mainly arise from the additional wheelchair-accessible taxi licences being released. In the main city, Hobart, the existing number of taxis in late 2003 was around 200, and the number of additional wheelchair-accessible taxi licences to be issued over the two year period is 20. The increase in supply of taxi services over the period will thus be around 10 per cent. There will be 33 additional wheelchair-accessible taxis across the state as a whole, representing around 8 per cent of the statewide taxi fleet of around 400 vehicles.

Although the legislation allows for a two-year 'moratorium' on the release of new perpetual taxi licences in all areas, the Minister for Infrastructure stated in the second reading speech for the Bill on 2 December 2003 that the moratorium will be applied only in the metropolitan taxi areas of Hobart, Launceston, Devonport and Burnie to encourage the uptake of wheelchair-accessible taxi licences in those cities. The Minister stated that perpetual licences could be issued in regional areas without a two-year wait. In March 2004 the government advertised for tender bids for one new licence in each of the 20 regional taxi areas, and received tender bids for licences in four of these areas. (All unsold licences will be sold by the Transport Commission at their assessed market value.)

The Tasmanian Government has introduced changes to its taxi and hire car legislation that are consistent with the four broad principles for staged reform in the industry. In the first two years after the amending Act commences,

there will be annual increases in wheelchair-accessible taxi numbers that will contribute significant increases in taxi services, together with some increases in regional taxi numbers. The government will establish a working group to monitor market developments. The legislative changes indicate that the government is committed to the potential for increased taxi numbers in future years. The Council also considers that the scope for price discounting that the new Regulations have introduced is a useful contribution to competition. The easing of restrictions on hire cars in 2000 has contributed to these vehicles being more responsive to consumer needs.

The Council has some reservations, however, that the arrangements for the tendering of perpetual plates may not result in any additional perpetual plates being issued, at least initially, because tender participants may not bid at the Valuer-General's assessed market value (particularly in the first tender). Nevertheless, in subsequent tenders, the assessed market value should adjust to the levels that the market can bear, because the Valuer-General will be able to use information garnered from the first auction. The Council also considers that the government should ensure the taxi industry working party, which will monitor the impacts of the reforms on price and service competition, is not dominated by particular sectional interests.

With the above provisos, the Council assesses that Tasmania has complied with its CPA clause 5 obligations in relation to taxis and hire cars.

C1 Health professions

Medical Practitioners Registration Act 1996

Tasmania's review of the Medical Practitioners Registration Act found that registration of medical practitioners is justified in the public interest, but that restrictions on the ownership of medical practices and controls on advertising were not.

The Tasmanian Government has accepted the review's recommendations, embodying them in amendments in the Medical Practitioners Registration Amendment Bill 2004, which Parliament passed.

Accordingly, the state has met its CPA clause 5 obligations in relation to this profession.

Optometrists Registration Act 1994

The key recommendations of Tasmania's optometry review were to remove restrictions on the ownership of practices and on the advertising of services. For the 2003 NCP assessment, the Council was advised that the government had accepted the recommendations. However, because the reforms had not

been implemented at the time, the Council assessed the state as not having completed its review and reform of optometry regulation.

The review recommendations have now been embodied within the Optometrists Registration Bill 2004 passed by Parliament. Accordingly, the Council now assesses the state as having met its CPA clause 5 obligations in this area.

Pharmacy Act 1908
Pharmacists Registration Act 2001

CoAG national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and on the ability of friendly society pharmacies to operate in the same way as other pharmacies (see chapter 19). Compliance with these requirements requires Tasmania to remove these restrictions from the Pharmacists Registration Act.

In the context of the Council's request for additional information following receipt of Tasmania's 2004 NCP annual report, the state advised that it had drafted an amendment Bill to implement pharmacy reforms in April 2004. However, this Bill was redrafted following correspondence from the Prime Minister on this issue to contain provisions to increase the number of pharmacies both pharmacists and friendly societies can own from 2 to 4. The Bill was subsequently tabled in Parliament on 19 October 2004.

As the proposed reforms fall short of reforms recommended by CoAG national processes, the Council assesses Tasmania as not yet having met its review and reform obligations in relation to pharmacy.

C2 Drugs, poisons and controlled substances

Poisons Act 1971
Alcohol and Drug Dependency Act 1968
Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*)
Criminal Code Act 1924 (drugs and poisons)

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session.

Tasmania has advised that it is drafting a new Poisons Act to account for the outcome of the national review.

The Council acknowledges that the Galbally Review is subject to national processes. However, because Tasmania has not yet fully implemented review recommendations, it has not yet met its CPA obligations in this area.

D Legal services

Legal Profession Act 1993

The recommendations from the Tasmanian review of the Legal Profession Act were to:

- reform the conveyancing market and remove the reservation of conveyancing work
- remove restrictions on advertising and on business structures for legal practices
- permit legal practitioners to arrange their own insurance
- introduce a new disciplinary process.

In the 2003 NCP assessment, the Council noted that Tasmania had not yet implemented reforms to its legal services legislation, and thus assessed the state's progress in this area as being incomplete.

The state has now passed the Conveyancing Bill 2004, which removes conveyancing practice reservations consistent with best practice. The separate Legal Profession Amendment Bill 2004 (introduced into Parliament in April 2004) sought to address advertising and disciplinary recommendations. However, as it has not passed through the Legislative Council, the government has decided not to progress the Bill. The state advises that the Minister is now currently attempting to resolve a number of issues with the Law Society.

As a consequence of the National Model Laws Project (see chapter 19), a final Bill will incorporate the remaining issues. These changes will allow for multidisciplinary practices (for example, to combine accounting and law firms under the one practice) and the use of contingency fees. In this context, Tasmania will consider the requirement that insurance for legal practitioners must be provided by the Law Society of Tasmania.

Tasmania has significantly enhanced competition in the legal profession through the passage of the Conveyancing Bill 2004, with further reforms pending.

However, because Tasmania has not yet completed its review and reform process, it has not yet met its CPA obligations in relation to the legal profession.

E Other professions

Auctioneers and Real Estate Agents Act 1991

The Department of Justice and Industrial Relations released the draft report of its review of the Auctioneers and Real Estate Agents Act for public comment in November 2001. The draft report's preliminary recommendations proposed:

- licensing real estate agents, subject to competency based qualifications and good character checks (both personal and financial), but not licensing:
  - real estate managers and sales consultants, because the educational qualifications and reputation checks of employees should be a matter for the employing agents
  - property managers, but requiring them to comply with general trust accounting and record management requirements
- continuing to exempt legal practitioners and accountants from the licensing requirement in relation to the sale of businesses that do not involve the sale of land
- allowing real estate agents to enter multidisciplinary partnerships
- transferring the regulatory and disciplinary functions of the Auctioneers and Real Estate Agents Council to the Office of Consumer Affairs and Fair Trading.

Tasmania intended to introduce new legislation in the spring 2002 session of Parliament, but was delayed by the state election. The legislation has not been introduced in subsequent sessions.

While the proposed reforms are consistent with the CPA guiding principle, the Council assesses Tasmania as not having met its CPA obligations in this area, because the state has not completed its reforms.

Travel Agents Act 1987

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19. Tasmania has implemented the majority of the recommendations from the review, but further legislative change may be required in connection with national changes to travel agents' qualifications.

The Council assesses Tasmania as not having met its CPA obligations in relation to travel agents legislation because it has not completed reform.

F1 Compulsory third party motor vehicle insurance

Motor Accidents (Liabilities and Compensation) Act 1973

The Tasmanian Government stated in its 2001 and 2002 NCP annual reports that it was examining the Victorian review of the Transport Accident Commission before making decisions about its Motor Accident Insurance Board, which is the statutory monopoly provider of compulsory third party motor insurance. The 2003 NCP annual report stated that the government had completed this examination and decided to make no changes to the legislation. Tasmania's 2004 annual report confirmed this decision.

For reasons outlined in chapter 9, the Council has not assessed Tasmania's compliance with its CPA obligations in this area for the 2004 NCP assessment.

I1 Education

Vocational Education and Training Act 1994

The Vocational Education and Training Act restricts competition by establishing conditions for the registration of training providers and the accreditation of training courses. Tasmania completed a review of the Act in 2001, which recommended simplifying the legislative provisions regarding vocational placements. Amendments arising from the review were enacted through the *Vocational Education and Training Amendment Act 2003*, which was proclaimed in November 2003.

The Council thus assesses Tasmania as having met its CPA obligations in this area.

I3 Gambling

Racing Act 1983
Racing and Gaming Act 1952 (except minor gaming)
Racing and Gaming Act 1952 (relating to minor gaming)

The Racing and Gaming Act (except for minor gaming) is now called the *Racing Regulation Act 1952*. The latter Act provided an exclusive licence for

TOTE Tasmania (formerly the TAB) to conduct totalisator betting and regulated the relationship of TOTE Tasmania with the racing industry. The provisions of the Racing Regulation Act that relate to totalisator betting subsequently became the *Gaming (Totalisator Betting) Act 1952*.

Following a restructure of its racing industry, Tasmania prepared three new Bills to replace the Racing Act and the Racing Regulation Act and these were assessed under Tasmania's gatekeeper arrangements. A regulatory impact statement prepared by representatives from the Department of Infrastructure, Energy and Resources found all major restrictions in the Bills as being in the public benefit. It is expected that the Bills will be debated in the spring 2004 session of Parliament. The Council notes that independent reviews in other jurisdictions did not find a public interest case for several of the restrictions which were subsequently relaxed or removed — for example:

- a prohibition on racing codes other than thoroughbred, harness and greyhound racing entering the regulated industry
- the requirement that bookmakers operate only as individuals or partnerships
- restrictions on the time, place and manner of betting with bookmakers
- a minimum telephone betting limit ($100).

In addition, the Council considers that it would be difficult to implement the recommended continuation of the prohibition on bookmakers (and other persons) transmitting bookmaker betting odds off course.

The provisions of the Racing and Gaming Act that relate to minor gaming were initially reviewed as part of a review of Tasmania's gaming legislation. In 2001, the gaming components of this Act were transferred to the *Gaming Control Act 1993* and were assessed under Tasmania's gatekeeper provisions. The Council's assessment of this Act is provided below.

TOTE Tasmania had a monopoly in the provision of wagering services from approved locations (over the counter) in Tasmania. Apart from totalisator wagering, this monopoly ended on 31 December 2003. From 2004, a Tasmanian gaming licence holder with fixed odds or sports betting endorsements will be able to provide services either over the counter or at an approved sporting event. However, the new legislation will retain TOTE Tasmania's monopoly on the provision of totalisator wagering services. This monopoly was not considered in the review of Tasmania's racing and betting legislation which reported in July 2003.

The Council considers that Tasmania needs to make a stronger public interest case to support its proposed retention of restrictions in its racing legislation. In addition, Tasmania has not reviewed the TOTE Tasmania monopoly of totalisator wagering services.

The Council thus assesses Tasmania as not having met its CPA obligations in relation to racing and betting legislation because the state has not completed the review and reform of its legislation.

Gaming Control Act 1993 (gaming machines, casino licensing and minor gaming)

Tasmania completed a minor review of its Gaming Control Act, finding that the restrictions on gaming machine operations should be retained on the grounds of probity. The review specifically excluded the 1993 deed between the Crown and Federal Hotels that gave Federal Hotels an exclusive 15-year licence to conduct casino, gaming machine and minor gaming (keno) operations. The deed is not a public document.

In correspondence dated 13 December 2001, Tasmania advised the Council that:

- a compensation claim would arise from revoking the exclusive licence
- it did not intend extending or renewing the licence with Federal Hotels beyond its expiry date.

In response, the Council indicated that it:

- accepted Tasmania's argument that the likely compensation claim from terminating the exclusive licence early may exceed any benefits from ending the licence before its expiry date
- sought a clear undertaking that Tasmania would not consider any exclusivity arrangements beyond 2008 with any potential operator.

On 6 May 2003, the Tasmanian Treasurer advised that the government intended to extend the exclusive licence to conduct keno, casino and gaming machine operations until 2018. The Treasurer also announced the introduction of a statewide legislative cap of 3680 on gaming machines — 287 more than the current number of machines in Tasmanian venues. The arrangements provide for a limit of 2500 gaming machines to be accessible through hotels and clubs. Venue limits for machines are to remain at 30 for licensed hotels and 40 for licensed clubs.

Tasmania's regulatory impact statements show that Tasmania currently has:

- the second lowest number of machines per thousand adults in Australia
- a below average spend per machine
- a relatively low level of problem gambling.

The regulatory impact statements maintain that the extension of exclusivity provides a public benefit by enabling the introduction of a statewide cap and legislated venue caps, which will prevent the proliferation and intensified use

of gaming machines and resultant increases in harm. They state that current deed arrangements prevent the state from limiting the growth in gaming machine numbers before 2008 because any attempt to do so would introduce significant sovereign risk issues and be likely to invoke lengthy legal proceedings involving financial compensation to the licensee. The Government considers that it would also have sent an extremely negative signal to the business community about the risks of doing business with the Tasmanian Government.

The regulatory impact statements state that if the government had not extended exclusivity, Federal Hotels would have exercised its right to increase gaming machine numbers resulting in an estimated increase of approximately 1500 machines before the expiration of its licence exclusivity in 2008. This estimate is based on the number of currently licensed venues that would be entitled to more machines and an estimate of the number of currently unlicensed venues (hotels predominantly) that could accommodate gaming machines in future.

Referring to the Productivity Commission finding that caps on gaming machine numbers can encourage gaming operators to operate existing machines more intensely and locate them in areas in which they achieve highest returns, the regulatory impact statements argue that retaining venue caps will limit this behaviour by Federal Hotels. Also, the limit on the total number of machines that may be installed in hotels or clubs means Federal Hotels will be unable to increase the wider availability of machines through clubs and hotels by reducing the number of machines at the state's two casinos.

The regulatory impact statements reject counteracting the potential increase in gaming machine numbers with increased player protection and harm minimisation measures, on the grounds that the gambling industry is already highly regulated and that further regulation would impinge on the legitimate nature of gambling as a form of entertainment for the community.

In addition to ceding its rights to increase gaming machine numbers, Federal Hotels agreed to other concessions in return for licence exclusivity. These included an increased contribution rate to the Community Support Levy, a commitment to improved player protection measures, payment of higher annual licence fees and taxes, and the provision of higher financial returns to venues that will have an enhanced ability to choose the machine/game mix for their particular venue. Tasmania considers that the latter offsets venues' lack of choice of gaming machine operator.

Tasmania also considers that additional competition would be of limited economic benefit, given the heavy level of regulation that exists in the gaming market. The second regulatory impact statement states that 'the impact of removing exclusivity is likely to be a small transfer of gains between participants rather than increased employment, economic efficiency or economic growth' (DTF 2004c, p. 9). It considers that the transfers could be in the form of 'higher player returns to consumers, or increased profits to venue owners through lower costs', but that these 'would be at the expense of higher

government licence fees and taxes that can be levied when a franchise is provided' (DTF 2004c, p. 9).

Tasmania supports its argument about the limited benefits of more competition by referring to Victoria, where two operators compete and attempt to maximise the return from each machine, resulting in Victoria having the highest gross profit per machine in Australia, the second highest spend per machine and the second highest level of problem gambling.

The changes to the Gaming Control Act that extend the exclusive licence were passed by Tasmania's Parliament in October 2003. Central to the Council's assessment is Tasmania's contention that the 1993 deed entered into with Federal Hotels means extending licence exclusivity is the only way in which to achieve the objective of limiting gaming machine numbers — that is, without licence exclusivity, Tasmania faced the prospect of Federal Hotels installing another 1500 machines.

While the Council can see benefits in the statewide cap, it has reservations as to whether, in the absence of exclusivity, Federal Hotels would have expanded machine numbers to the extent claimed. The Council notes that the annual reports of the Tasmanian Gaming Commission show that in 2001-02 and 2002-03, more gaming machine licences were surrendered than new licences issued. This suggests that the gaming machine market had reached saturation point, at least under current licensing requirements.

In the event that it did not gain an extension of exclusivity, Federal Hotels foreshadowed changes to its business model (presumably a relaxation of the conditions imposed on new licensed venues) in order to expand gaming machine numbers. However, if Federal Hotels faced the prospect of losing exclusivity in 2008, expansion of machine numbers would be a strategy of doubtful merit, as it would result in the company owning a large number of near new gaming machines without certainty about the right to operate them in future.

The Council considers that the principal beneficiaries from competition are likely to be venue owners and consumers, although the extent of their gains is unlikely to be substantial. It is not clear that any benefits to these groups would be offset by lower licence fees and taxes as claimed by Tasmania. Without a competitive tender for the right to operate machines it is difficult for Tasmania to demonstrate that its current arrangements maximise government revenue from the gaming machine licences on issue.

The Council thus assesses Tasmania as not having complied with its CPA obligations in relation to the areas subject to the deed — gaming machines, casinos and minor gambling (keno).

J3 Building occupations

Architects Act 1929

A national review of state and territory legislation regulating the architectural profession was completed in 2002. Chapter 19 provides more details on this national review.

When the Council completed the 2003 NCP assessment, Tasmania had not completed legislative amendments to account for recommendations arising from the national review process. In its 2004 NCP annual report to the Council, Tasmania reported that the *Building Act 2000*, which commenced in 2003, and the *Building (Consequential Amendments) Act 2003*, which amends the Architects Act, implemented all of the recommendations arising from the national review of state and territory architects' legislation.

The Council assesses Tasmania as having met its CPA clause 5 obligations.

Plumbers and Gas-fitters Registration Act 1951

Tasmania completed a review of the Plumbers and Gas-fitters Registration Act in October 1998. The Act restricts competition by requiring licensing and registration of plumbers and gasfitters, and specifying entry requirements, the reservation of practice for activities, and disciplinary processes. The review recommendations included allowing any person to work under the direct supervision of a registered plumber or gasfitter; allowing any person to do simple plumbing tasks; reducing the existing levels of registration; and limiting the qualifications and experience required for registration to a demonstration of competence.

When the Council prepared the 2003 NCP assessment, the Tasmanian Government had not considered the 1998 NCP review recommendations, and the assessment found review and reform activity was incomplete. Tasmania has since proposed new occupational licensing legislation to provide for the licensing and registration arrangements for plumbers, gasfitters and electricians. The government accepted all of the review recommendations and proposes to introduce the legislation to Parliament in the autumn 2005 session to amend the Act to reduce areas of reservation of practice, limit the qualifications and experience required for registration, implement a self-certification system, and amalgamate registration and plumbing inspection systems.

The Council assesses Tasmania as not having met its CPA clause 5 obligations because the state has not completed the reform process.

17 The ACT

A8 Veterinary services

Veterinary Surgeons Registration Act 1965

The review of the ACT Veterinary Surgeons Registration Act took place in conjunction with the review of the territory's health professional legislation because the health Minister has responsibility for the Act's operation. A submission is being prepared for consideration by the government to enable reform of the Act, which will be based on the reform model used for reform of health professions. The National Competition Council's 2003 National Competition Policy (NCP) assessment provided details of proposed reforms.

Because the ACT has not completed the reform of its veterinary surgeon legislation, the Council assesses it as not having met its Competition Principles Agreement (CPA) obligations in this area.

B1 Taxis and hire cars

Road Transport (Public Passenger Services) Act 2001
Road Transport (General) Act 1999
Motor Traffic Act 1936

Under the ACT's Road Transport (Public Passenger Services) Act, the Minister determines the maximum number of taxi and hire car licences[1]. The number of taxi plates in the ACT has increased only marginally since 1995, and taxi plate values have been high (over $200 000). The review of the legislation by the Freehills Regulatory Group in 2000 recommended that the taxi and hire car supply restrictions be removed. A second review, by the Independent Competition and Regulatory Commission in 2002, also recommended freeing entry to the taxi and hire car industry.

The ACT Minister for Urban Services announced reforms for the taxi and hire car industry on 10 December 2002. Under these reforms, an additional 5 per cent of taxi licences would be issued each year, subject to a reserve price that would be based on the ACT Valuer-General's valuation of market prices in

[1] The *Motor Traffic Act 1936* was repealed in 2000.

November 2001. The reserve price would be set at 90 per cent of the market value. If the average price at auction were more than 95 per cent of the market value, then a further 5 per cent of licences would be released. In the following years, market value would be the average sale price from the previous year's auction. The maximum number of licences released in any year would be 10 per cent of the current fleet. New hire car licences would be released according to a similar formula, but at a rate of 10 per cent for the first two years. The Independent Competition and Regulatory Commission would review the reforms after two years and, thereafter, every three years.

The Road Transport (Public Passenger Services) Amendment Bill 2003 was introduced to the ACT Legislative Assembly in June 2003 to establish the regulatory power to allow the annual increases in licence numbers through auction arrangements. The 2003 Bill would remove existing legislative provisions that empower the Minister to determine the maximum numbers of taxi and hire car licences. In the 2003 NCP assessment, the Council found that review and reform activity was incomplete because the Bill had not yet been passed.

The Valuer-General determined a valuation for taxi and hire car licences and the government scheduled the first auction of licences for August 2003. This auction was deferred by the Legislative Assembly's referral of the legislation to the Standing Committee on Planning and Environment, which was given until December 2003 to make its report. The Committee issued its report in that month, recommending that the government finance a buy-back of hire car plates and implement an off balance sheet arrangement to fund a buy-back of taxi plates. The Committee recommended that the government, following the buy-backs, should issue new hire car and taxi plates according to a 'formula' that links licence availability to measures such as growth in passenger trips, population and gross territory product (Standing Committee on Planning and Environment 2003).[2] The report also argued for the establishment of a second taxi radio network.

The government tabled a response to the Standing Committee's report in the Legislative Assembly on 22 June 2004. It announced that it would proceed 'as soon as possible' with an auction of 10 taxi licences (equivalent to about 4 per cent of the ACT's taxi population) in accordance with the formulae described above. This release would follow what the Minister for Urban Services described as a period in which no new licences have been released for some time. There would not be a buy-back of taxi plates, but the government would offer to buy back hire car licences and would lease an unlimited number of these licences. The government has undertaken to make funds available for the buy-back by 1 July 2005.

[2] The Council notes that the proposal has little merit because consumers or taxpayers would pay for a buy-back only to face the costs of regulation in the future, if the formula constrained the supply of taxis.

In August 2004 the Legislative Assembly debated the Road Transport (Public Passenger Services) Amendment Bill 2003 and the government's response to the Standing Committee's report. The Assembly passed into law amendments that will allow unlimited entry into the hire car market for applicants who meet certain quality standards and pay an annual fee. This will facilitate the flow of chauffeured car services to consumers, especially given hire cars can join the taxi ranks at the Canberra airport and casino and given there is no legislated minimum hire time limit or regulated fare for ACT hire cars. Owners of existing hire car plates will be able to offer them for buy back. The Assembly did not support the government's commitment to the release of 10 new taxi plates or the associated formulae and auction arrangements.

While the changes to hire car regulation that the Assembly endorsed in August 2004 are consistent with the reform principles that the Council circulated to jurisdictions in October 2002 (see chapter 9), the ACT has not made progress in reforming the taxi market. It has failed to act on the taxi recommendations of the two NCP reviews.

The Council thus assesses that the ACT has not met its CPA clause 5 obligations. This reform failure may be somewhat mitigated by competition from hire cars, albeit that they constitute imperfect substitutes.

B3 Dangerous goods

Dangerous Goods Act 1975

Following a review in 2000, the ACT Government prepared a new dangerous goods regulatory package that is consistent with the national standard for the storage and handling of dangerous goods, the Australian dangerous goods code and the Australian explosives code. This package was not completed at the time of the 2003 NCP assessment, which thus concluded that reform activity was incomplete. The government introduced the Dangerous Substances Bill 2003 to the Legislative Assembly on 11 December 2003, where it was passed on 4 March 2004. The *Dangerous Substances Act 2004* commenced on 5 April 2004 and, subsequently, the Dangerous Goods Act was repealed.

The ACT thus has met its CPA clause 5 obligations with respect to dangerous goods legislation.

C1 Health professions

Chiropractors and Osteopaths Act 1983

The ACT completed its NCP review of health practitioner legislation, which included the Chiropractors and Osteopaths Act, in March 2001. The review recommended not restricting practices to any specific professions and removing unnecessary business conduct restrictions. The Council's 2003 NCP assessment, however, considered that the ACT, notwithstanding that its proposed reforms satisfactorily addressed competition issues, did not yet meet its CPA clause 5 obligations because the relevant amendments were not implemented. At the time, the ACT advised that it had accepted the review's recommendations and had completed consultation on an exposure draft of the Health Professionals Bill. This Bill was to repeal the existing health profession Acts and replace them with a consolidated Act.

The *Health Professionals Act 2004* has now been passed by the Legislative Assembly and implements the mechanisms necessary to satisfy review recommendations. Under the Act, health profession boards will administer the process of health professional regulation and set registration and practice standards under regulation. The adoption of review recommendations, therefore, will depend on the nature of the promulgated requirements that are subject to legislative gatekeeping requirements.

At a meeting with the ACT's Department of Treasury on 3 October 2004, the Council Secretariat received assurances that there are appropriate controls to prevent Boards re-introducing anticompetitive restrictions removed by the legislation (such as ownership restrictions). When coupled with the fact that promulgated Board requirements are subject to RIS requirements, the Council considers that the ACT has met its CPA obligations in relation to chiropractors and osteopaths through passage of the Act.

Dentists Act 1931
Dental Technicians and Dental Prosthetists Registration Act 1988

In addition to general review recommendations (see the section on chiropractors and osteopaths), the ACT's health practitioner review made particular recommendations relating to the dental professions. It recommended removing:

- the requirement for dental prosthetists to hold professional indemnity insurance
- restrictions on the scope of practice for dental hygienists and dental therapists
- registration requirements for dental technicians.

As for general review recommendations, the ACT's Health Professionals Act will implement the mechanisms necessary to satisfy specific review recommendations relating to professional indemnity insurance and the scope of practice for dental hygienists and dental therapists. The Act does not introduce or mandate particular requirements; rather, it provides a mechanism for the Dental Board to introduce particular requirements when they are in the public interest.

However, the Health Professionals Act does not remove registration provisions for dental technicians. The review considered that, given dental technicians work to the order of registered dentists or dental prosthetists, that these employers should be responsible for ensuring the technician is qualified and competent. The review also considered that the public risks associated with the work of a dental technician are low and could appropriately be managed through infection control and occupational health and safety legislation (Government of the ACT 1999, p. 36).

The Council's 2003 NCP assessment noted that reforms for the dental profession were in line with the CPA guiding principle. This assessment was based partly on ACT advice that the Health Professionals Bill would fully implement the recommendations of the NCP review (Government of the ACT 2003b, pp. 2-3). However, in the context of its 2004 NCP annual report, the ACT has taken the position that the Act will continue to register dental technicians (Government of the ACT 2004a, p. 5).

The Council considers retaining registration is inconsistent with review recommendations and can restrict competition. It also notes that most jurisdictions do not register dental technicians.

Following a meeting with the Council Secretariat, the ACT Department of Treasury provided some public interest justifications to support the registration of dental technicians. The Council, however, does not find the arguments compelling and notes that they should have been considered in the context of the Territory's health practitioner review process. It also notes that the risks to consumers of work undertaken by dental technicians are reduced because many dental technicians are employed by dental laboratories that may be liable for the negligent actions of their employees.

Given this, the Council assesses the ACT as having met its CPA obligations in relation to the Dentists Act but not the Dental Technicians and Dental Prosthetists Registration Act. However, the Council notes that the specific impacts on competition may depend on the particular regulations promulgated.

Medical Practitioners Act 1930

The ACT completed its NCP review of health practitioner legislation in March 2001, including the Medical Practitioners Act. The review did not make specific recommendations regarding the medical profession, except to

recommend the repeal of the Medical Practitioners (Advertising) Regulations 1985.

The Health Professionals Act repeals these advertising regulations. As outlined above, it will also implement the mechanisms necessary to satisfy the recommendations arising from the review of health practitioner legislation (see the section on chiropractors and osteopaths).

The ACT has thus met its CPA obligations in relation to medical profession legislation through passage of the Act.

Nurses Act 1988

The ACT review of health practitioner legislation, which included the Nurses Act, did not make any specific recommendations regarding the regulation of nurses. However, the ACT's Health Professionals Act implements the review recommendations for health practitioner legislation generally (see the section on chiropractors and osteopaths), so the Council assesses the ACT as having met its CPA obligation in relation to nursing legislation.

Optometrists Act 1956

The ACT included its Optometrists Act in its review of health practitioner legislation. The one specific review recommendation regarding optometrists was to continue restricting the sale of spectacles or contact lenses not prescribed by a medical practitioner or optometrist, but to further review this restriction. The ACT's Health Professionals Act does not address this restriction specifically. The ACT has advised that the requirement will be further reviewed in the development of profession-specific regulations created under the Act.

Given that the Health Professionals Act implements review recommendations for health practitioner legislation generally, the ACT has now met its CPA obligation in relation to optometry legislation.

Pharmacy Act 1931

CoAG national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and that friendly societies be able to operate in the same way as other pharmacies (see chapter 19).

The ACT pharmacy legislation does not contain restrictions on the number of pharmacies that a pharmacist can own, so the outstanding restriction relates to the operation of friendly societies.

On 14 May 2004 the ACT Government introduced the Pharmacy Amendment Bill (No. 2) 2004 to the ACT Legislative Assembly. If passed, this Bill would have permitted the operation of friendly society pharmacies in the ACT. At the time, the government noted in its explanatory statement that:

> *The impetus for the amendment was a result of the recognition that friendly society pharmacies provide a benefit to the community.* (Government of the ACT 2004b, p. 2)

These amendments, if passed, would have been consistent with the outcomes of CoAG national processes and would have enabled the territory to meet its CPA obligations in relation to pharmacy legislation.

However, on 16 July 2004 the Prime Minister advised the ACT that if it implemented similar reforms to New South Wales and Victoria, tailored to its circumstances, it would not attract a competition payment penalty. In particular, the Prime Minister advised:

> *Given that there are no friendly society pharmacy outlets currently operating in the ACT, the Commonwealth would not impose penalties on the ACT should it, instead, legislate to prohibit their entry.* (Howard 2004b)

On 5 August 2004 the Bill was discharged from the Legislative Assembly, presumably as a result of the Prime Minister's advice. At the time of this assessment's publication, the ACT had not advised the Council of its position on pharmacy reform.

Given that the ACT has not passed pharmacy reforms to remove restrictions on the operation of friendly societies, the Council assesses it as not yet having met its review and reform obligations in relation to pharmacies. The Council separately notes that the territory has passed the *Pharmacy Amendment Act 2004* that precludes a registered pharmacist from carrying on a business as owner on, inside or partly inside the premises of a supermarket. The Council notes that there is no support for this prohibition in the outcomes of the CoAG national processes, nor has the ACT provided the Council with a robust public interest case for this restriction.

Physiotherapists Act 1977

The ACT included the Physiotherapists Act in its review of health practitioner legislation. The review recommendations did not include any specific recommendations regarding physiotherapists. However, the ACT's Health Professionals Act implements review recommendations generally (see the section on chiropractors and osteopaths), so the Council assesses the ACT as having met its CPA obligation in relation to physiotherapists.

Podiatrists Act 1994

The ACT included the Podiatrists Act in its review of health practitioner legislation. The review recommendations did not include any specific recommendations regarding podiatrists. However, the ACT's Health Professionals Act implements review recommendations generally (see section on chiropractors and osteopaths) so the Council assesses the ACT as having met its CPA obligation in relation to podiatrists.

Psychologists Act 1994

The ACT included the Psychologists Act in its review of health practitioner legislation. The review recommendations did not include any specific recommendations regarding psychologists. However, the ACT's Health Professionals Act implements review recommendations generally (see section on chiropractors and osteopaths), so the Council assesses the ACT as having met its CPA obligation in relation to psychologists.

C2 Drugs, poisons and controlled substances

Drugs of Dependence Act 1989
Poisons Act 1933
Poisons and Drugs Act 1978

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. CoAG is now considering the proposed response out of session. The ACT has advised that it intends to implement review recommendations once CoAG endorses them.

The Council acknowledges that the Galbally Review is subject to national processes. However, the ACT has not fully implemented review recommendations, so it has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act 1970

The Council's 2003 NCP assessment noted that the ACT had ceased a review of the *Legal Practitioners Act* so all outstanding review and reform activity could be progressed through the national model laws project to ensure a uniform and nationally consistent framework for the industry. As an interim measure, however, the ACT Government had made some reforms to

professional indemnity insurance by amending the Act to allow for a number of professional indemnity insurance providers.

Since the 2003 NCP assessment, the ACT has partly removed conveyancing practice restrictions through the passage of the *Civil Law (Sale of Residential Property) Act 2003*. This Act allows agents to complete some of these actions by annotating the contract for sale. If the market or a sector of the market chooses to take this course, under the law, a private seller or a private seller and their agent could undertake the functions commonly undertaken by a lawyer. However, the practice reservation has not been fully removed: if the purchaser of a property wants to waive their rights to the 'cooling off' period, they must obtain legal advice.

In July 2004, the ACT signed a memorandum of understanding indicating that the ACT will adopt the model laws for the legal profession. Some elements of the ACT package depend upon Commonwealth regulations — which, while agreed by the Commonwealth, have not yet been implemented.

While national model laws do not stem from NCP requirements, the Council accepts that the ACT had ceased its review of legal practitioner legislation and committed to progressing reforms at the interjurisdictional level. The Council will thus consider the implementation of national model laws as being consistent with the ACT's NCP obligations.

The Council recognises that the ACT has enacted reforms to increase competition in the market for professional indemnity insurance and in certain aspects of the conveyancing process. However, it notes the ACT's lack of progress in implementing national model laws outcomes. For this reason, the ACT has not yet met its CPA obligations in relation to the legal profession.

E Other professions

Agents Act 1968 (travel agents)

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. (The findings of the review and the working party response are outlined in Chapter 19.)

Completion of reform activity has been delayed by the need to finalise certain issues at the national level.

The ACT has thus not met its CPA obligations in relation to travel agents legislation because it has not completed reforms in this area.

Agents Act 1968 (employment agents)

In the ACT, employment agents are regulated under the Agents Act, which was reviewed in conjunction with a review of the *Auctioneers Act 1959* in 2001. The review questioned the imposition of a licensing regime on the employment agents market. It found that the employment agent licensing scheme is essentially a revenue-raising measure to pay for a licensing system that does little to produce significant public benefits or prevent market failure. Following a further review in June 2002, the fee payable for an employment agent's licence was reduced from $1023 to $371.

The Legislative Assembly passed the *Agents Act 2003* in May 2003, which repealed the 1968 Act on its commencement. The new Act removes restrictions about place of work, which agents cited as a significant restriction on their capacity to operate in the ACT. The regulation impact statement (RIS) for the 2003 Act concluded that the regulation of agents, including employment agents, would encourage optimal market performance and protect the financial interests of consumers. It found that the costs for employment agents under the new Act's revised fee structure are negligible compared with the significant public benefits that flow from the legislation. In particular, it found that licence fees would remain at an appropriate cost recovery level. The RIS has not been made available to the Council for scrutiny.

The fact that the review found that licensing of employment agents provides little in the way of public benefits and that other jurisdictions do not require licensing (or are moving to a deregulated environment) casts doubt on the robustness of the ACT's public interest case for retaining the licensing — particularly, given that the RIS has not been made available. The ACT, however, has reported that it will not reconsider the licensing requirement because it has been through a thorough public benefit assessment, incurs minimal costs to the industry and does not attract negative comments from relevant participants.

In the absence of licensing in other jurisdictions, the Council maintains its previous assessment that the ACT has not met its CPA obligations in this area. It accepts, however, that the licensing requirement does not impose significant costs on industry participants.

F2 Superannuation

Public Sector Management Act 1994

ACT policy requires permanent government employees to be members of the Australian Government's superannuation scheme. They are treated as 'eligible employees' under the Australian Government's *Superannuation Act 1976*. The ACT's Public Sector Management Act allows appointees to the senior executive service of the ACT public service to join any approved

superannuation fund within the meaning of the Australian Government's *Superannuation (Productivity Benefit) Act 1988*, unless they are already members of the Australian Government scheme.

Although the Australian Parliament passed choice of fund legislation in late June 2004, this did not mean permanent employees in the ACT public service automatically have a choice of funds. Under s252(2)(m) of the Public Sector Management Act, the Chief Minister can ask the Commissioner for Public Administration to make 'management standards' for the arrangements for ACT public sector employees' superannuation. The ACT Government is considering whether to change its public sector superannuation arrangements. The Council thus assesses that the ACT has not yet met its CPA clause 5 obligations because review and reform of public sector superannuation in the ACT is incomplete.

H3 Trade measurement legislation

Trade Measurement Act 1991

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19). However, because the national review and reform of trade measurement legislation has not been completed, the ACT has yet to meet its CPA obligations in relation to trade measurement legislation.

I1 Education

Education Act 1937
Free Education Act 1906 (NSW)
Public Instruction Act 1880 (NSW)
Schools Authority Act 1976

The ACT has completed the reviews of its education legislation. The reviews involved extensive consultation and made 23 recommendations, including:

- establishing a single Act for schooling in the ACT
- considering teacher registration for the professional enhancement of teachers in the ACT

- retaining legislative provisions for the establishment and re-registration of nongovernment schools

- reviewing the licensing arrangements for independent preschools that are attached to registered nongovernment schools.

During the period that it set aside for public comment on its proposed legislative changes, the ACT Government received a substantial report from the Inquiry into Education Funding in the ACT containing recommendations on the registration and accountability requirements for nongovernment schools. The ACT Government accepted the recommendations and passed amending legislation to implement reforms in March 2004. The Council thus assesses the ACT as having met its CPA obligations in this area.

I3 Gambling

Betting (ACTTAB Limited) Act 1964
Betting (Corporatisation) (Consequential Provisions) Act 1996

The Betting (ACTTAB Limited) Act and the Betting (Corporatisation) (Consequential Provisions) Act govern the operations of the ACT TAB and provide for an exclusive licence. The review of this legislation recommended that the government allow new licences for TABs operating wholly within the ACT, but not allow interstate totalisators until systems are in place to extract racing turnover taxes (and any other turnover taxes and licences) from wagers that originate in the ACT.

The government announced partial support for the review recommendations, noting that care needs to be exercised in assessing the social impacts of opening up the totalisator market. Further, the government noted that the potential loss of TAB revenue has implications for ACTTAB, the government and the industry, which need to be addressed. The ACT expressed its willingness to consider further the issue of non-exclusive TAB licensing arrangements when the findings of the National Cross-Border Betting Task Force are known. Arising from the report of the task force, the Australian Racing Ministers' forum has agreed in principle to the concept of levying a racing product fee on all corporate bookmakers, excluding TABs. This in-principle agreement has been communicated to industry, which is formulating its response.

Because the ACT has not completed its reform activity, the Council assesses it as not having complied with its CPA obligations in relation to TAB regulation.

Gaming Machine Act 1987

The ACT's *Gaming Machine Act* discriminated between gaming machine venues. Only registered clubs could obtain licences for class C machines (more modern machines). Six holders of a general liquor licence were each eligible for up to 10 licences for class B machines (older, draw poker machines) and tavern licensees could apply for a maximum of two class A machines (simple machines that are no longer manufactured). The ACT's casino legislation prohibits the casino from operating gaming machines.

The ACT completed an initial review of the Act in 1998, but subsequently referred the Act to the ACT Gambling and Racing Commission for review. The review took account of NCP principles among other criteria. The commission's review report was released in October 2002 and its most significant recommendation was that gaming machine licences should be restricted to clubs. It considered that gaming machine revenue should be used for the benefit of the community, rather than for the profit of the licensee, but that allowing all not-for-profit organisations to access licences would create difficulties in the monitoring of entities' administrative arrangements. It stated that among not-for-profit organisations, clubs have historically demonstrated that they are ideally set up to control and operate gaming machines. The report also recommended:

- tightening the definition of a club and more clearly specifying the amounts to be paid as community and charitable contributions
- breaking the nexus between liquor and gaming machines by:
  - phasing out the right to operate class B gaming machines as held by six general liquor licence holders
  - not allowing tavern licensees to replace their obsolete class A gaming machines with class C machines
- maintaining the current territory-wide cap on gaming machines (5200)
- introducing a central monitoring system.

The government accepted the recommendation that licences should be predominantly held by clubs, although the amendments passed in March 2004 allow for taverns and hotels with fewer than 12 rooms to access a maximum of two class B machines.

While all jurisdictions regulate gaming venues by capping their entitlement to gaming machines (generally providing clubs with a higher cap than that for hotels), the ACT has the most discriminatory arrangements. The Productivity Commission concluded that venue restrictions are based on 'history and arrangements with particular interests, rather than strong policy rationales' (PC 1999b, p. 14.32). It considered that 'the only justifiable policy rationale for regulating access to gambling is to limit social harms or meet community norms. Other reasons — based on helping the "club" industry or creating monopoly rents for taxation purposes — do not withstand scrutiny' (PC 1999b, p. 15.1). The Council considers that the ACT's arrangements do not

have any harm minimisation benefits because access to gaming machines is widespread and the Productivity Commission found little evidence that clubs provide a less risky environment than that of hotels.

At the time of its review, the Gaming Machines Act did not have an objective, nor did the review recommend objectives. The ACT Government has subsequently informed the Council that a primary objective of any revised legislation should be to ensure the benefits from the operation of gaming machines accrue to the community. (However, the ACT Government did not include this, or any other, objective in its amendments to the Act). The government has asserted that this objective could not be achieved other than by restricting the issue of gaming machine licences to not-for-profit organisations (specifically, licensed clubs). The CPA places the onus of proof on governments to show that restricting competition is the only way of achieving their objectives. The Council considers that the ACT has not met this requirement and so assesses that the ACT has not complied with its CPA obligations in this area.

Interactive Gambling Act 1998

The licensing provisions of the ACT's Interactive Gambling Act are aimed at ensuring the probity of gaming suppliers and the integrity of their operations, in the interests of consumer protection. The granting of licences is subject to criteria designed to ensure the probity of the applicant and the integrity of the games on offer. The Minister also has a discretionary power to grant licences, which the ACT believes is necessary 'to give a further assurance that the provider of the licence will be of good character and possess the capacity to run a gambling operation in accordance with regulations' (Government of the ACT 2002, p. 49). Under law, the Minister is required to provide reasons for such a decision, and the decision is reviewable by the Administrative Appeals Tribunal.

The ACT Gambling and Racing Commission is reviewing the Interactive Gambling Act, primarily as a consequence of the enactment of the Australian Government's *Interactive Gambling Act 2001*. The Council previously accepted that it was prudent for the ACT to wait for the outcomes of the Australian Government's review before completing its own review. Now that the Australian Government's review has reported and the government's response is known, the Council looks to the ACT to complete its review in a timely manner.

Because the ACT has not completed its review, the Council assesses it as not having met its CPA obligations in this area.

J3 Building occupations

Architects Act 1959

A national review of state and territory legislation regulating the architectural profession was completed in 2002 (see chapter 19). When the Council completed the 2003 NCP assessment, the ACT Government had not introduced amending legislation, and the Council found that review and reform activity was incomplete. Subsequently, the ACT rewrote the Architects Act to incorporate the recommendations of the national working group that responded to the Productivity Commission's 2000 report on state and territory architects' legislation. The ACT Government introduced the amending legislation to the Legislative Assembly on 4 March 2004, and the Assembly passed it on 1 April 2004. The *Architects Act 2004*, which commenced on 1 July 2004, is consistent with the principles for harmonisation of architects Acts as agreed by states and territories, and is closely modelled on the New South Wales and Queensland reforms.

The Council thus assesses the ACT as having met its CPA clause 5 obligations in this area.

Building Act 1972
Electricity Act 1971
Electricity Safety Act 1971

In 2000 the ACT reviewed the occupational regulation aspects of the Building Act, the Electricity Act (electricians licensing) and the Plumbers, Drainers and Gasfitters Board Act. These Acts provided for the licensing and registration of builders, electricians, plumbers and gasfitters; the setting of entry requirements based on qualifications, experience and business capacity; and the reservation of certain areas of practice to licensed people. The review concluded that information asymmetries and negative externalities justify the government's role in ensuring tradespeople have the appropriate skills to undertake building and construction. The review recommended replacing legislation with a single new Act for licensing builders, electricians, plumbers, drainers and gasfitters; replacing existing boards with a single registrar (supported by separate advisory panels); making changes to remove duplication and streamline licensing arrangements; and changing the disciplinary system.

The ACT Government accepted 21 of the 22 recommendations and began to draft legislation. It did not accept a provision for a peer group to overturn the registrar's decisions on strictly technical matters. The 2001 ACT elections meant that the introduction of legislation was postponed until 2002. However, the ACT Government did not approve the continuation of legislative drafting until December 2002. At the time of the 2003 NCP assessment, the legislation had not been introduced formally to the Legislative Assembly. In that assessment, the Council found that reform activity was incomplete.

The Government introduced the *Construction Occupations (Licensing) Bill 2003* to the Legislative Assembly on 20 November 2003, and the Assembly passed it on 11 March 2004. The new Act will commence on 1 September 2004 after education classes are run for licensees and administrative systems have been developed. (This new Act was introduced and passed in a package with the *Building Act 2004* and the *Construction Occupations Legislation Amendment Act 2004*.)

The Council thus assesses the ACT as having met its CPA clause 5 obligations in this area.

Plumbers, Drainers and Gasfitters Board Act 1982

The ACT reviewed this Act in conjunction with the occupational regulation aspects of the Building Act and the Electricity Act. (This review and the Government's response are discussed in the previous section on electrical workers.) The new Construction Occupations Licensing Act and the new Building Act (discussed above) establish and consolidate new licensing arrangements for a range of building trades, and repeal the Plumbers, Drainers and Gasfitters Board Act.

The Council thus assesses the ACT as having met its CPA clause 5 obligations.

18 Northern Territory

A3 Fisheries

Fisheries Act

The 2003 National Competition Policy (NCP) assessment concluded that the Northern Territory had not met its Competition Principles Agreement (CPA) clause 5 obligation arising from the Fisheries Act, because the 2000 NCP review had recommended the removal of some restrictions on competition but the legislation was still to be reformed. Subsequently, the Fisheries Amendment Bill passed in May 2004 removed several restrictions. In particular, the amendments:

- clarified the stated objectives of the legislation
- replaced the prohibition on the issue of new fishery licences with a regular assessment of the sustainable level of licences for each fishery
- provided for the allocation of any new licences on an open and competitive basis
- removed the prohibition on foreign ownership of licences.

Some recommendations for reform are being implemented via the review of other regulatory instruments. The government is progressively reviewing all fishery management plans, for example, beginning with Spanish mackerel, mud crab and barramundi, to assess whether input controls can be replaced by individual transferable quota. The government is also:

- reviewing restrictions on the transferability of licences in the aquarium display, Timor reef and demersal fisheries
- committed to recovering fishery management costs from licence holders, and recently increased some fees and introduced a fee for fishing tour operators
- increasing resources allocated to the enforcement of fishery controls.

The government has rejected several recommendations for reform following further consideration of the public interest. These include the recommendations to issue fishery licences indefinitely, to allow the transfer of development licences, to allow the re-sale of fish and to introduce licensing of amateur (recreational) fishers. The Council is satisfied that these provisions

do not restrict competition to a material degree and/or that they are necessary for enforcement purposes.

In 2003 the Council urged the Northern Territory Government to reconsider the NCP review finding of a net public benefit from restricting competition in the pearl oyster hatchery industry via hatchery quotas. The NCP review of the Western Australian pearl industry regulation, which is similar to the Northern Territory regulation, found no demonstrable net public benefit from retaining the hatchery policy, notwithstanding a pro-quota submission prepared (on behalf of the Pearl Producers Association) by the same consulting firm that undertook the Northern Territory's NCP review. The Northern Territory Government has declined to resubmit the pearl oyster hatchery quota to NCP review.

The Council assesses that the Northern Territory has made substantial progress but has yet to fulfil its CPA clause 5 obligations arising from the Fisheries Act. To fulfil these obligations, the Northern Territory needs to:

- announce firm outcomes from the review of management plans for the Spanish mackerel, barramundi and mud crab fisheries, adopting individual transferable quota except where this is clearly shown not to be in the public interest
- remove the remaining restrictions on the transfer of licences in the aquarium/display, Timor reef and demersal fisheries, or show that the retention of these restrictions is in the public interest
- remove the pearl oyster hatchery quota or show, via a new open and independent NCP review of the restriction, that it is in the public interest.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Northern Territory) Act

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Northern Territory legislation is the Agricultural and Veterinary Chemicals (Northern Territory) Act.

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of

the national code, the reform of state and territory legislation that automatically adopts the code has not been completed, and the Council thus assesses that the Northern Territory has not met its CPA obligations in relation to this legislation.

Poisons and Dangerous Drugs Act

Beyond the point of sale, agvet chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

The Northern Territory did not list the agvet chemicals 'control of use' provisions in its Poisons and Dangerous Drugs Act for NCP review. However, the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004* will repeal these provisions. It controls the use of agvet chemicals, fertilisers and stock foods, and brings the Northern Territory's arrangements into alignment with those of other jurisdictions. The Act passed Parliament on 18 May 2004 and was assented to on 4 June 2004, but had not commenced at the time of this assessment.

The Council assesses the Northern Territory as having met its CPA obligations in this area.

A6 Food

Food Act 1986

The major reviews of food production, processing and distribution were outlined in the Council's 2003 NCP assessment. Arising from these reviews, the Australian Government developed the *Food Standards Australia New Zealand Act 1991* and the joint Food Standards Code (renamed the Australia New Zealand Food Standards Code in 1995).

In November 2000, the Council of Australian Governments (CoAG) signed an Intergovernmental Food Regulation Agreement. Under the agreement, the states and territories undertook to make their food legislation consistent with the core provisions of the model food Act within 12 months. The core provisions relate mainly to food handling offences and to the adoption of the Food Standards Code. Adoption of the noncore provisions is voluntary. States and territories may also retain provisions in their legislation that do not conflict with the enacted provisions of the model food Act.

In February 2004, the Northern Territory passed the Food Act that adopts the model Act, so the Council assesses the Northern Territory as having met its CPA obligations in this area.

A8 Veterinary services

Veterinarians Act

The Northern Territory completed the review of its Veterinarians Act in 2000. The review recommended:

- retaining licensing, the reservation of title and the reservation of practices
- increasing the number of nonveterinarian representatives on the Veterinary Board from one to at least two of the board's five members
- removing restrictions on the advertising of fees and discounts.

The Northern Territory subsequently advised that the Veterinarians Act has been amended to increase the nonveterinarian representation on the Veterinarians Board and to allow a nonveterinarian to become president, and that the Regulation restricting advertising has been repealed.

The Council thus assesses the Northern Territory as having met its CPA obligations in this area.

A9 Mining

Mining Act 1980

The Northern Territory's principal mining legislation is the Mining Act, which prohibits exploration and extraction activity without a licence or similar authority. The government completed a review of this Act and announced its response to the review recommendations. Five recommendations require amendments to the Act, four require discussion with the industry before any further action, and four require development of the supporting public interest arguments.

An amending Bill incorporating the review recommendations that require a legislative response was passed by Parliament in February 2004. Further, the mining industry has been consulted on the review recommendations that specifically call for discussions with the industry. In response, the industry expressed the view that these matters should be addressed in the broader context of a current departmental review of the Mining Act. The government has provided a public interest case to support its position on each of the rejected review recommendations as follows:

- Recommendation 4 — introduction of negotiated exploration licence terms

  The government considers that the costs of this approach would outweigh the benefits. It points out that the Northern Territory exploration

licensing arrangements are generous compared with those of other jurisdictions, and that fixed terms provide explorers and investors with a degree of certainty about clearly delineated rights. In addition, fixed terms ensure a turnover of exploration areas, allowing explorers with different technologies to access areas.

- Recommendation 6 — abolition of exploration licence relinquishment provisions

  An exploration licence is granted for six years with part relinquishment commencing after two years and continuing until the term expires. This recommendation follows from recommendation 4, in that relinquishment provisions are no longer appropriate where explorers negotiate the term of the exploration licence. The government, however, views relinquishment provisions as an integral part of the fixed term framework and as an incentive for explorers to act decisively on their holding, according to their stated management plans and the terms of the grant.

- Recommendation 7 — provision of compensation for compulsory surrender of licence

  The review recommends that miners, if they are required to surrender an exploration licence or if the licence is cancelled, should be compensated for the full market value of their loss. The government considers that this approach would present significant practical problems in terms of resource ownership, assessment method and uncertainty.

- Recommendation 12 — removal of the power to force development

  Consistent with its recommendation 4, the review advocates abolishing the power of the Minister to force development. The government, however, contends that there is considerable scope for industry participants to engage in anticompetitive conduct in the early stages of mining without the existing provisions applying to exploration activity. Such conduct could impose significant economic costs on the community by unduly restricting access to mineral resources and by deferring economically viable resource development.

The Council accepts the government's case and assesses that the Northern Territory has met its CPA obligations in relation to mining.

B1 Taxis and hire cars

Commercial Passenger (Road) Transport Act

The Commercial Passenger (Road) Transport Act allows the government to set the number of taxi and hire car licences. In 1999 the government removed

the restrictions on taxi and hire car numbers, and introduced a buy-back program for existing plates. In the 2001 NCP assessment, the Council thus assessed that the Northern Territory had complied with its NCP obligations.

Subsequently, in November 2001 the government imposed a temporary (initially six month) cap on the number of taxi, hire car and minibus licences, which was still in place when the 2002 NCP assessment was completed. The Council concluded in that assessment that the Northern Territory would no longer comply with CPA obligations if it introduced new restrictions on competition (particularly in relation to taxi and hire car numbers) without adequate public interest justification.

In October 2002 the government announced that it would remove the temporary cap in December 2002 (subsequently extended to February 2003), and that minibuses would be allowed to respond to street hails. Parliament passed legislation that established a category of executive taxis and limousines (higher standard taxis and hire cars respectively) in early 2003.

On 3 June 2003 the Minister for Transport and Infrastructure announced that the number of taxi licences would be capped in Darwin and Alice Springs, to accommodate industry concerns. Despite the increase in taxi numbers following earlier reforms, the caps result in a significant restriction on taxi numbers. They fix the taxis-to-population ratio at 1:900. The Council's 2003 NCP assessment reversed the 2001 compliance recommendation, finding that the restriction on competition re-introduced by the caps meant that the Northern Territory was no longer compliant with its CPA clause 5 obligations for taxis.

In September 2003, the government allowed minibuses to respond to hails, and to rank at bus stops (minibus ranks were already in place). These changes enhanced the capacity of minibuses to offer services similar to taxis. This reinforced the positive impact on taxi services arising from the removal of entry restrictions in 1999, although the numbers of taxis and commercial passenger vehicles overall have fallen somewhat since the cap was introduced in 2003. The number of taxis in Darwin increased from 88 in 1998 to 135 in 2000, before falling to 122 in 2003 and 113 in March 2004. There has been a broadly similar pattern in Alice Springs taxi numbers. (There are approximately 25 minibuses in Darwin, and a little under 20 in Alice Springs.)

In introducing the 2003 changes to policy, the government committed the Commercial Passenger Vehicle Board to review the Darwin and Alice Springs caps in May 2004. The Council understands from discussions with officials that the board has completed the report and, as at September 2004, the government was considering the options proposed in it.

Given this consideration, the Council finds that review and reform activity in the area of taxis and hire cars is incomplete.

C1 Health professions

Health Practitioners and Allied Professionals Registration Act 1985

The key recommendations of the Northern Territory review of the Health Practitioners and Allied Professionals Registration Act, which registers chiropractors, occupational therapists, osteopaths, physiotherapists and psychologists, were:

- to continue reserving the use of professional titles for registered practitioners, but making entry requirements more flexible and clarifying personal fitness criteria

- to give the professional boards the ability to restrict treatments or procedures that have a high probability of causing serious damage, if those procedures are likely to be performed by people without the appropriate skills and expertise.

The review was completed in 2000. The government at the time accepted the review recommendations and determined in 2001 that the current legislation regulating health professionals would be repealed and that an omnibus Act would be created to replace the existing Acts. This position was subsequently endorsed in 2003 and approval was given for drafting of the new legislation.

In the 2003 NCP assessment, the Council noted that these recommendations, (except the recommendation to retain title protection for occupational therapists) were consistent with competition policy objectives. Nonetheless, the Council assessed the Northern Territory's progress in reforming the relevant professions as being incomplete because the review recommendations were yet to be implemented.

The Health Practitioners Act 2004 which broadly incorporated the review recommendations was passed in April 2004.

On 8 October 2004, the Council Secretariat met with the Northern Territory's Department of the Chief Minister, Northern Territory Treasury and other government representatives. At this meeting, the Council Secretariat sought clarification on whether, under the legislation, boards may introduce new anticompetitive requirements through codes, including relating to practice restrictions. The Council received advice that the ability of boards to introduce new restrictions was circumscribed under the Act. The Northern Territory's Health Professions Licensing Authority has also separately advised that codes will be reviewed on an annual basis.

Given this, the Council considers that the Northern Territory has met its CPA obligations in relation to these professions, except for occupational therapists. However, the Council notes that this position is based on the Northern Territory's ongoing compliance with CPA clause 5(5) requirements.

For occupational therapists, the review considered that title protection has the potential to reduce risk and costs to the government from service users inappropriately choosing unqualified health care providers. It concluded that restricting the use of professional titles for occupational therapists provides a net public benefit, so long as the costs of operating the registration system are modest. The review did not, however, link the generic benefits of title protection to occupational therapy services in particular.

As noted in the 2003 NCP assessment, the Council doubts the review's public interest reasoning for retaining registration for this profession. In particular, it questions the strength of the evidence that significant consumer protection benefits arise from reserving the 'occupational therapist' title. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as common law, the *Trade Practices Act 1974* and independent health complaints bodies, and there does not appear to be an increased risk of harm to patients in these jurisdictions.

Nonetheless, while the Northern Territory has failed to meet its CPA obligations in relation to occupational therapists, the Council notes that the retention of title protection does not have a material impact.

Dental Act 1986

The Northern Territory's review of the Dental Act was completed in 2000 and recommended removing ownership restrictions and amending reserved practice to protect mobility between oral health professionals. The government accepted the review recommendations and approved drafting of an omnibus Bill in 2003 to implement the reforms. In its 2003 NCP assessment, the Council considered that the proposed reforms were consistent with CPA principles, but assessed the Northern Territory's reforms in this area as being incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioner's Bill 2003, which was passed in April 2004, implements review recommendations relating to the dental profession. The Northern Territory has thus met its CPA obligations in relation to this profession.

Medical Act 1995

The Northern Territory's review of its Medical Act recommended, among other things, removing reservations of practice, but empowering boards to restrict treatments or procedures that have a high probability of causing serious damage. It also recommended removing advertising and ownership restrictions. The government accepted the review recommendations for the medical profession, and approved drafting of an omnibus Bill in 2003 to implement the reforms. The Council's 2003 NCP assessment considered that the proposed reforms were consistent with CPA principles, but assessed the

Northern Territory's reforms in this area as incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioners Registration Bill, passed in April 2004, incorporates the review's recommendations. The Northern Territory has thus met its CPA obligations in relation to medical practitioner legislation.

Nursing Act

The Northern Territory accepted the recommendations of a review into the Nursing Act, including the recommendation to remove the reservation of practice (but to empower the Nursing Board to restrict certain treatments or procedures that have a high probability of causing serious damage). The review also recommended removing advertising restrictions.

Consistent with the proposed reforms for the above professions, the government accepted the review recommendations and approved drafting of an omnibus Bill to implement the reforms. In its 2003 NCP assessment, the Council considered that the proposed reforms were consistent with CPA principles but assessed the Northern Territory's reforms in this area as being incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioners Registration Bill, passed in April 2004, incorporates the review's recommendations. The Northern Territory has thus met its CPA obligations in relation to nursing legislation.

Optometrists Act

The Northern Territory review of the Optometrists Act in 2000 recommendations included:

- modifying restrictions on practice to allow the Optometrists Board to authorise any person (regardless of professional classification) to practise aspects of optometry if they demonstrate competence

- removing ownership restrictions.

As for other health professions, the government accepted the review recommendations and approved drafting of an omnibus Bill to implement the reforms.

The Health Practitioners Bill 2003, passed in April 2004, incorporates the review recommendations. The Northern Territory has thus met its CPA obligations to review and reform its legislation regulating optometrists.

Pharmacy Act 1996

CoAG national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and allow friendly societies to operate in the same way as other pharmacies (see chapter 19). Further, while the Wilkinson review commissioned by CoAG provided that pharmacies should continue to be owned and operated by pharmacists, it noted:

> … *[w]here a jurisdiction's regulation does not extend as a far as the Review's recommended line, that jurisdiction should not be compelled to extend that regulation*. (Wilkinson 2000, p. 19)

The Northern Territory's Pharmacy Act does not contain restrictions on how many pharmacies a pharmacist can own. It also does not rule out the ownership of pharmacies by persons other than pharmacists (Wilkinson 2000, p. 196).

In the context of the 2003 NCP assessment, the Department of Health and Community Services advised the Council that the government intended to introduce ownership restrictions on pharmacies, with some discretion for the Minister to grant exemptions to this restriction.

These amendments, if implemented, would not have been consistent with the outcomes of the Wilkinson Review, as they would impose restrictions where none existed. Given these pending changes, the Council assessed the Northern Territory's progress in reviewing and reforming pharmacy regulation as being incomplete. The Council also looked for the Northern Territory to provide additional evidence that the benefits of restricting ownership outweigh the costs.

On 1 April 2004 the Northern Territory passed the *Health Practitioners Act 2004*, but the specific provisions pertaining to pharmacy ownership in schedule 8 did not commence with the rest of the Act. This schedule restricts the ownership and control of pharmacies (subject to several exceptions) to pharmacists or business entities owned and controlled by pharmacists. Further, the schedule provides that the Minister cannot grant an exemption to friendly societies unless doing so:

- will improve health services or access to health services
- will meet the needs of the community where the pharmacy business is situated.

On 3 February 2004 the Council advised the Northern Territory of its obligations under CoAG national processes. It also emphasised that the Northern Territory should consider introducing a restriction on pharmacy competition (where one does not exist) only if there is clear evidence that this would be in the public interest.

Consistent with this advice, the Northern Territory has reviewed these provisions in accordance with a Terms of Reference that incorporates the comments of the Council.

Given the comprehensiveness of the Wilkinson Review and the subsequent CoAG working group consideration of ownership restrictions, the Council considers that the Northern Territory should not introduce ownership restrictions. A Northern Territory review finding to the contrary would need to rigorously demonstrate the analytical shortcomings of the outcomes of CoAG national processes.

However, following a letter from the Prime Minister stating that no penalty would attach to the introduction of new restrictions on competition, the Territory Government advised that its independent review report would probably not be released.

It appears that the Northern Territory will now introduce new restrictions that, on evidence to date, serve the interests of a vested group rather than the community and are inconsistent with CoAG outcomes. Currently, the Council assesses that the Northern Territory has not yet met its CPA obligations. If schedule 8 commences, the Northern Territory will be assessed as failing to comply with its CPA obligations.

Radiographers Act

The Northern Territory was the only jurisdiction with dedicated radiographer legislation that had not met CPA requirements at the time of the 2003 NCP assessment. The Northern Territory has since passed the Radiation Protection Bill, which repeals the Radiographers Act and transfers the registration and licensing powers of persons using a radiation source to the Chief Health Officer, consistent with CPA requirements.

The Northern Territory has thus met its CPA requirements to review and reform legislation regulating radiographers.

C2 Drugs, poisons and controlled substances

Poisons and Dangerous Drugs Act
Therapeutic Goods and Cosmetics Act
Pharmacy Act

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session. The Northern Territory has advised that it intends to implement review recommendations once CoAG endorsement takes place. Amendments of the Poisons and Dangerous Drugs Act and the Therapeutic Goods and

Cosmetics Act are included in the Northern Territory's 2004 legislative program for commencement on or about 1 July 2005.

The Council accepts that jurisdictions are considering the Galbally Review at the national level through CoAG. However, because the Galbally reforms have not yet been implemented, the Northern Territory has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act

The Northern Territory review of the Legal Practitioners Act made recommendations, including that:

- areas of work reserved for legal practitioners should accord with areas of work reserved on a national basis (that is, appearances in court, probate work and the drawing up of wills and documents that create rights between parties, except conveyancing)
- the provisions that prohibit barristers from acting independently of one another should be repealed, but barristers should continue to be subject to regulations suitable to that kind of sole practice.

The Northern Territory government decided to implement outstanding review recommendations in conjunction with national model laws (see chapter 19). Model laws are expected to be implemented in 2005 following consultation. The issues not addressed in the model legislation are to be addressed in separate legislation which is being developed concurrently. The Northern Territory will also consider its legal professional indemnity regime in the context of national model law processes underway.

The reforms recommended by the review of the Legal Practitioners Act are consistent with CPA principles, but yet to be implemented. For this reason, the Northern Territory has not yet met its CPA clause 5 obligations in relation to the legal profession.

E Other professions

Consumer Affairs and Fair Trading Act (travel agents)

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The

recommendations of the review were not ultimately accepted by the working party. More detail is provided in chapter 19.

The Northern Territory has advised that it has not implemented most of the provisions identified in the national NCP review as anticompetitive (for example, the provisions relating to the travel compensation fund). However, the government has formed an advisory committee which released an issues paper early in 2004. Noting that the Northern Territory does not currently require travel agents to participate in the travel compensation fund, the advisory committee will address whether the government needs to enact new legislation providing for compensation to clients of licensed travel agents. Any competition restrictions introduced as a result of new legislation will be subject to the Northern Territory's competition impact analysis process.

The Council assesses the Northern Territory as not having met its CPA clause 5 obligations in relation to travel agents legislation because it has not completed its reforms.

F1 Compulsory third party motor vehicle insurance

Territory Insurance Office Act
Motor Accidents (Compensation) Act

The Territory Insurance Office is the monopoly provider of compulsory third party motor insurance in the Northern Territory. The government completed a review of its compulsory third party insurance legislation in late 2000 and is considering the recommendations. This review of the Motor Accidents (Compensation) Act concluded that the legislation is consistent with the Northern Territory's NCP obligations and argued for retaining the monopoly arrangements. The government has commissioned a review of options for the future ownership and management of the motor accidents compensation scheme. The review is scheduled for completion in late 2004.

For reasons outlined in chapter 9, the Council has not assessed the Northern Territory's compliance with its CPA clause 5 obligations in this area for the 2004 NCP assessment.

G2 Liquor licensing

Liquor Act

The Northern Territory's Liquor Act and Liquor Regulations contained a public needs test that required the licensing authority, when determining applications for a new licence, to consider whether existing sellers could meet

consumer needs. In addition, the Act discriminates between hotels and liquor stores in Sunday trading: liquor stores are prohibited from trading on Sundays whereas hotels may open from 10 am to 10 pm.

The Liquor Act review has been finalised and submitted to government for consideration. In September 2003, the government announced its response to the review. Of the review's 29 recommendations (17 of which required legislative amendments), 27 were endorsed by the government and the required amendments were passed in March 2004. Among the amendments is the replacement of the needs test with a 'public interest' test. This change effectively removes competition with surrounding outlets as a factor preventing the grant of new licences. The licensing criteria now focus on public amenity/harm minimisation issues.

The government did not accept the review's recommendation about the wording of the objectives of the Act, preferring alternative (but consistent) wording to that recommended. The only outstanding review recommendation, therefore, is the removal of the discriminatory restriction on packaged liquor trading, which allows only hotels to sell packaged liquor on Sundays.

Relevant to the Sunday packaged liquor trading restriction has been the government's development of a comprehensive Alcohol Framework to deal with the antisocial impacts of alcohol consumption. It considers this framework to be critical for a concerted focus on one of the Northern Territory's major problem areas:

- The Northern Territory's per person consumption of alcohol is 70 per cent higher than the national average.

- The tangible costs incurred to deal with alcohol problems in the Northern Territory add to more than two-and-a-half times the amount spent by other jurisdictions on a population basis.

- Alcohol is the major substance abuse issue for Indigenous communities and is strongly linked to the increasingly poor state of the health, social and cultural circumstances of these communities.

The alcohol framework report was published in July 2004. It recommended deferring the extension of Sunday trading to liquor stores for twelve months following implementation of the alcohol framework, to assess if its proposals (particularly on the sale of cheap high alcohol products) had been effective. It further recommended a removal of the prohibition on Sunday trading by liquor stores if there has been a significant decline in alcohol sales and/or other evidence that Sunday trading by particular stores will not exacerbate alcohol related harm.

In correspondence to the Council, the government stated that it has rejected the recommendations of the alcohol framework and will retain the existing Sunday trading arrangements. The government states that the Northern Territory has high levels of alcohol abuse which, coupled with high levels of itinerancy, generate substantial social costs. It maintains that the restriction

of Sunday packaged liquor sales to hotels, taverns and clubs is an effective strategy for reducing these costs for the following five reasons:

1. Hotels, taverns and clubs provide extensive facilities for the consumption of alcohol on site, with takeaway sales usually representing a relatively lower proportion of sales.

2. Hotels and taverns specialise in the sale of alcohol and therefore managers and employees have greater awareness of, and are generally better trained in, responsible sale of alcohol practices.

3. Supermarket based liquor outlets deal only with takeaway sales and licensees are usually not subject to the same level of regulatory oversight as hotel based employees.

4. Alcohol related health and crime statistics are historically lower on Sundays.

5. Restrictions on takeaway sales (by hours of operation and product type) in regional centres have proven to be successful in terms of reducing antisocial behaviour.

The Council has previously stated its support for restrictions on alcohol availability which do not discriminate between sellers. Arguments four and five suggest that there is considerable merit in restricting, or even completely prohibiting, Sunday packaged liquor sales by all sellers. They do not, however, support restricting Sunday trading by liquor stores while allowing hotels, taverns and clubs to sell packaged liquor. The first argument applies to on-premises consumption, but does not appear relevant to packaged liquor sales, which by their nature are intended for consumption away from on-site facilities.

The government's public benefit case thus rests on the second and third arguments: that hotel licensees and employees are more responsible sellers than liquor store licensees. The Council considers that evidence supplied by the government does not support such a generalisation. The government cites 'more' public complaints about liquor stores and a Darwin store's loss of licence following irresponsible selling practices — which of itself indicates that these problems can be addressed without discriminatory restrictions on competition. Indeed,

> *many take away outlets have instituted policies and practices to deter sales to itinerants and prevent sales to intoxicated people. Some examples of these practices are; drive through bottleshops refusing to sell alcohol to people on foot, employing Aboriginal liaison staff and limiting the range of alcohol products for sale. Licensees reportedly make these changes because of genuine concerns about antisocial behaviour, and because of the effect of itinerant behaviour on their staff and their business.* (Townsend and Renouf 2004, p. 9)

The Council considers that uniform trading conditions should apply to all sellers of packaged liquor, even to the extent of a prohibition on Sunday sales. At the very least, justifiable concerns about the harmful impact of Sunday packaged liquor sales imply that it would be appropriate for the government to require all sellers to demonstrate, as a condition of their licence, that Sunday packaged liquor trading will not adversely affect neighbourhood amenity or contribute to alcohol related harm. The Council also supports rigorous enforcement of responsible service requirements on all packaged liquor sellers.

The Council notes that the Northern Territory has demonstrated substantial review and reform progress since the 2003 NCP assessment, particularly by removing the needs test, the major restriction in its legislation. The Council assesses the Northern Territory's public interest test for new licence applications as complying with CPA obligations. However, the Northern Territory has rejected the recommendations of its review and its alcohol framework and retained discrimination between sellers in trading hours without providing a convincing public interest case.

The Council accepts the Territory Government's reluctance to allow a very significant increase in availability of liquor on Sundays through an increase in the number of outlets permitted to open on that day. However, the evidence for retention of the discriminatory provisions as the means of limiting availability is unconvincing. In particular, the Northern Territory failed to consider alternative measures to limit the availability of alcohol and the relative effectiveness of these alternatives and their implications for competition. For example:

- allowing all liquor outlets to trade on Sundays but for a more restricted period than the current 12 hours
- instituting a roster system that retains the current number of sellers on Sundays but allows all incumbents the opportunity to trade
- instituting bans on particular beverages shown to cause greatest harm
- banning all packaged liquor sales on Sundays regardless of outlet type.

The above examples need not be mutually exclusive and the Council understands that some of these non-discriminatory approaches are used in various parts of the Northern Territory.

The Council thus assesses that the Northern Territory has not met its CPA obligations for liquor licensing.

H3 Trade measurement legislation

Trade Measurement Act

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

Because the national review and reform of trade measurement legislation has not been completed, the Northern Territory is yet to meet its CPA obligations for trade measurement legislation.

I1 Education

Education Act (higher education)

The Northern Territory did not include its Education Act (which regulates higher education) on its original NCP legislation review program. It did, however, review s73A of the Act to determine whether any changes were required to reflect the National Protocols for Higher Education Approval Processes that determine the conditions under which universities operate. The review identified areas in which the Act should be amended, and the *Higher Education Act* which implements the review recommendations received assent on 4 June 2004.

The Council thus assesses the Northern Territory as having met its CPA clause 5 obligations in this area.

I2 Child care

Community Welfare Act

The Northern Territory review of the Community Welfare Act was completed in April 2000. The review concluded that there was a strong net community benefit in retaining the potentially anticompetitive elements of the Act, but recommended:

- either enforcing or removing the licensing requirements for children's homes

- re-framing child care centre standards as outcomes rather than prescribed standards
- clarifying the basis and status of standards for child care
- broadening the scope of child care activities that are brought within the licensing net to encompass all forms of purchasable child care service.

The government considered that the public interest would be best served by not attempting to institute the reforms in isolation and with limited public consultation and decided to undertake the reforms as part of a broad early childhood strategy. The Northern Territory's 2004 NCP annual report has advised that the amendments to the Community Welfare Act will now take place in one stage, not two as previously advised. The government anticipates that a discussion draft of the Bill will be tabled in November 2004 and introduced in March/April 2005.

The Council thus assesses the Northern Territory as not having met its CPA clause 5 obligations because the government has not completed the reform process in this area.

I3 Gambling

Gaming Control Act and regulations
Gaming Machine Act and regulations

A review of these Acts was completed in September 2002. The review covered casino licensing, the operation of gaming machines in casinos, clubs and hotels, and arrangements for the conduct of lotteries and minor gaming.

Casino regulation

The Council has previously noted that the Northern Territory has encouraged casino operators to relinquish their exclusive licences. The review recommended that existing casino licensing arrangements continue for the duration of current licences unless anticompetitive restrictions can be removed without significant penalty to the government. The review also recommended a regular review of licensing arrangements in the light of the Northern Territory's economic growth and market expansion, so as to negotiate the restriction's removal as sufficient net public benefits become available.

The government has accepted all major recommendations of the review. In the case of casinos, no legislative change will be necessary, so the Council assesses the Northern Territory as having met its CPA obligations in relation to casino regulation.

Gaming machine regulation

The government accepted the major recommendations of the review in relation to gaming machines, which included:

- the adoption of revised legislative objectives
- the continuation of licensing for industry participants, but with increased standardisation and simplification of licensing arrangements where possible
- the removal of a requirement that a take-away liquor licence be held as a condition for the operation of gaming machines
- the continuation of the absolute limit on the number of non-casino gaming machines, but with a regulatory definition of the formula used to calculate the limit
- the retention of differential gaming machine limits for clubs (45 machines) and hotels (10 machines). The review considered that to increase caps on hotels to levels similar to those applying to clubs would substantially increase access to gaming machines and would likely contribute to increased problem gambling.

The Northern Territory subsequently advised that altering regulatory provisions to include the formula for the global cap on gaming machines proved problematic, and the recommendation has not been implemented. The government has introduced measures to safeguard against a proliferation of gaming machines once the take-away liquor condition is removed as the filter for determining which hotel venues may apply for a gaming machine licence. Amending legislation which more clearly defines the outlet types that can apply for gaming machines, requires a community impact analysis to be undertaken, and lists density and harm related criteria that the Licensing Commission must consider when assessing applications, was assented to on 1 September 2004.

The Council, while concerned about the continuation of differential venue caps, recognises that increasing hotel machine numbers would add considerably to the number of machines in operation with potential for increased harm.

The Council assesses that the Northern Territory has complied with its CPA obligations in relation to gaming machines.

Totalisator Licensing and Regulation Act
Sale of NT TAB Act

The Northern Territory regulates wagering via the Sale of NT TAB Act and the Totalisator Licensing and Regulation Act.[1] The former Act gave the Minister the authority to sell the NT TAB, while the latter establishes the scheme of regulation for the resultant privately owned entity. The Centre for International Economics reviewed both Acts, and the government has endorsed the review recommendations.

In relation to the Sale of NT TAB Act, the review supported the sale of the NT TAB, finding no public benefit in maintaining public ownership, and that some change to regulatory arrangements was necessary to separate ownership and regulatory responsibilities. The Council assesses the Northern Territory as having met its CPA obligations in relation to this Act.

The Totalisator Licensing and Regulation Act does not stipulate that a wagering licence shall be exclusive. Rather, it gives that power to the Northern Territory Licensing Commission, which may grant an exclusive licence under s21. The Commission exercised this power in 2002, granting UNiTAB Limited (the purchaser of the NT TAB), an exclusive licence for 15 years.

The review found that arguments for exclusivity based on maintaining the size of the pool were not convincing for the Northern Territory where it is unlikely that a 'Northern Territory-only' pool would be sufficient to secure the benefits typically associated with pool size in any event. Historically, the Northern Territory has merged with larger pools in other jurisdictions in offering services to Northern Territory punters. Similarly, the argument that exclusivity is necessary to prevent free riding on the racing industry was also found not to apply to the Northern Territory, where most betting takes place on events outside the Northern Territory, and where the government directly supports the local racing industry.

The review's principal argument in support of exclusivity was its doubt as to whether more than one operator would survive in a market of the Northern Territory's size and whether the market would continue to be serviced by an agency network business without exclusivity. Given these doubts, the review found it probable that exclusivity would deliver a net benefit.

The Council has reservations about both findings. The way in which to test whether the market can support only a single seller would be to remove exclusivity. The CPA obliges governments to demonstrate that competition restrictions are the only way in which to achieve their objectives. The Act does not contain explicit objectives but, if it aims to ensure the widespread availability of totalisator gambling, then there are ways other than totalisator

[1] These Acts repealed and replaced the *Totalisator Administration and Betting Act*.

exclusivity (for example, subsidies for the provision of remote facilities) to ensure this outcome. The review, however, did not explore these alternatives.

The Council thus assesses the Northern Territory as not having complied with its CPA obligations in relation to the Totalisator Licensing and Regulation Act.

An additional issue was a 10-year moratorium on the granting of additional sports totalisator licences (announced at the time of the sale), which the review found was not in the public interest. The government lifted the moratorium following negotiations with UNiTAB Limited.

Racing and Betting Act and regulations
Unlawful Betting Act

The Northern Territory review of the Racing and Betting Act and Regulations and the Unlawful Betting Act was completed in June 2003 and made 32 recommendations, including:

- increasing the standardisation and simplification of licensing arrangements for industry participants
- removing licensing requirements for bookmakers' assistants and introducing common licensing requirements for staff employed by different types of betting operator
- removing various restrictions on bookmaking activity, including provisions on advertising, minimum betting limits, business structures, the prohibition against third party betting on lawful betting activities, financing arrangements, trading hours and the use of premises for other activity
- considering allowing expanded business activity by betting operators at approved nonracing venues.

The government accepted all major review recommendations and Parliament passed amending legislation on 30 March 2004. The Council thus assesses the Northern Territory as having complied with its CPA obligations in this area.

J3 Building professions

Architects Act

A national review of state and territory legislation regulating the architectural profession was completed in 2002. Chapter 19 provides more details on this national review.

The government endorsed the implementation of the legislative amendments recommended by the national working group that considered the Productivity Commission's 2000 review of architects' legislation. The Northern Territory's *Architects Amendment Bill 2003* was passed by Parliament in November 2003, and received royal assent on 7 January 2004. The significant amendments to the Architects Act:

- require five Architects Board members instead of three, including two nonarchitects
- simplify rules on architectural companies and partnerships
- change the restriction on the title 'architect' to permit derivatives of the title that describe a recognised competency or qualification.

The Council thus assesses the Northern Territory as having met its CPA clause 5 obligations.

19 National legislation reviews

The Competition Principles Agreement (CPA) provides, where a review raises issues with a national dimension or effect on competition (or both), that the government responsible for the review will consider whether the review should be undertaken on a national (interjurisdictional) basis. If a government considers a national approach to be appropriate, then it must consult other interested governments before determining the terms of reference and the appropriate body to conduct the review. This chapter discusses legislation review and reform activity that is being conducted on an interjurisdictional basis or that presents issues for which all governments have a collective responsibility to achieve compliance with National Competition Policy (NCP) obligations.

A number of national reviews have taken several years to be completed, in many cases reflecting protracted interjurisdictional consultation. Further, review and reform activity by each state and territory has depended on the conclusion of a national review process, which can significantly delay relevant reform.

In the 2003 NCP assessment, the National Competition Council encouraged governments to conclude national reviews and consequent reforms, noting that all governments have a collective responsibility to ensure the finalisation of these processes. The Council informed jurisdictions in November 2003 that for the 2004 NCP assessment, it would scrutinise the progress of any outstanding national review processes to determine whether the sources of the impasses lie with particular jurisdictions or jurisdictions generally, and that it would quarantine such matters from its consideration of competition payments only in exceptional circumstances.

The following sections summarise the status of the review and reform activity for each of the national reviews.

Review of the *Agricultural and Veterinary Chemicals Code Act 1994* and related Acts

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority for Agricultural and Veterinary Chemicals) administers the scheme. The Australian Government Acts

establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the Agricultural and Veterinary Chemicals Code Act. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

Beyond the point of sale, these chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and uses other than those for which a product is registered (that is, off-label uses).

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

National chemical registration scheme

The Victorian Minister for Agriculture and Resources commissioned the review on behalf of Australian Government, state and territory Ministers for agriculture/primary industries, following a decision by the Agriculture and Resource Management Council of Australia and New Zealand (ARMCANZ). The final review report was presented on 13 January 1999. On 3 March 1999 the Standing Committee on Agricultural Resource Management (SCARM) publicly released the report and established an interjurisdictional Signatories (to the National Registration Scheme for Agricultural and Veterinary Chemicals) Working Group to prepare an intergovernmental response to the report's recommendations.

SCARM/ARMCANZ endorsed the intergovernmental response to the review in 2000. The Council of Australian Governments (CoAG) Committee on Regulatory Reform cleared the response, which accepted some recommendations and established interjurisdictional working groups and task groups to consider the other issues.

A task force, for example, examined review recommendations on the regulation of low risk chemicals, and the Australian Government subsequently introduced the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002. This legislation was passed by the Australian Parliament in February 2003 and came into operation in October 2003. The amendments were automatically mirrored in the state and territory legislation.

Three working groups examined the review recommendations on manufacturing licensing, cost recovery by the Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority for Agricultural and Veterinary Chemicals) and alternative assessment providers respectively. These working groups have finalised their

reports. The Primary Industries Standing Committee (formerly SCARM), which serves the Primary Industries Ministerial Council, endorsed the reports of the latter two working groups in September 2002. These reports supported the review recommendations regarding cost recovery by the Australian Pesticides and Veterinary Medicines Authority, and also that the authority should broaden the range of bodies from which it contracts technical assessment services. The Primary Industries Standing Committee developed a revised fee and levy structure for the authority, and the Australian Government had been expected to introduce a Bill to amend the Agricultural and Veterinary Chemicals Code Act in the autumn 2004 session of Australian Parliament. These amendments would be automatically reflected in state and territory mirror legislation. However, the public consultation process gave rise to several issues about the cost recovery model, which will be addressed through further consultation and refining of the amending legislation. It is anticipated that this legislation will be introduced to the Australian Parliament in spring 2004, and the government expects it will be passed in autumn 2005. The new fee structure is expected to commence on 1 July 2006.

The Australian Government endorsed the revised framework for the Australian Pesticides and Veterinary Medicines Authority's use of alternative suppliers of assessment services in December 2003. The framework includes provisions for the contestability of some work, subject to certain conditions.

The working group on licensing of agricultural chemical manufacturers sent its report to the Primary Industries Standing Committee in June 2003. The standing committee supported the working group's endorsement of the national review recommendation to remove the (exempted) requirement for licensing until the case for licensing is made. It also agreed to close a gap in agvet legislation that does not allow compliance with the required quality of active constituents to be enforced. The Australian Pesticides and Veterinary Medicines Authority released a regulatory impact statement on quality assurance of active constituents and agricultural chemical products for public comment in December 2003. On 1 May 2004 it introduced a new quality assurance system for active constituents.

The Australian Government considered the review recommendation concerning compensation for third party access to chemical assessment data, and agreed that an enhanced data protection system is needed. It consulted key industry stakeholders on a proposed reform package and is preparing drafting instructions for legislation.

Because some issues remain outstanding from the national review, the Australian Government has not finalised legislation to revise the national Agricultural and Veterinary Chemicals Code. The delay in the national code has meant that reform of state and territory legislation that automatically adopts the national code has not been completed. This delay has implications for the following state and territory legislation, which are discussed in the jurisdictional assessment chapters:

Agriculture and Veterinary Chemicals (New South Wales) Act 1994

Agriculture and Veterinary Chemicals (Victoria) Act 1994

Agricultural and Veterinary Chemicals (Queensland) Act 1994

Agricultural and Veterinary Chemicals (Western Australia) Act 1994

Agricultural and Veterinary Chemicals (South Australia) Act 1994

Agricultural and Veterinary Chemicals (Tasmania) Act 1994

Agricultural and Veterinary Chemicals (Northern Territory) Act.

'Control of use' legislation

The national review examining 'control of use' legislation in Victoria, Queensland, Western Australia and Tasmania recommended that these governments:

- establish a task force to develop a nationally consistent approach to the control of the use of agvet chemicals
- continue to exempt veterinarians from provisions relating to the supply and use of veterinary chemicals, but remove the exemption in relation to agricultural chemicals
- retain the minimum necessary licensing (business and occupational) for agricultural chemical spraying.

Ministers in these jurisdictions established a Control of Use Taskforce as recommended. For off-label use, the task force considered that nationally consistent outcomes in chemical risk management are essential and that no areas have been identified in which there is a deficiency in desired outcomes. The taskforce agreed that more data are required nationally to substantiate risk management performance in agvet chemicals across the country. The Primary Industries Standing Committee endorsed the final report of the task force in March 2003.

The Control of Use Taskforce also recommended that work is needed to specify the circumstances in which a chemical can be used on another crop, and that this work should be undertaken along with an investigation of the different methods of application. This work will be progressed through the Primary Industries Standing Committee in consultation with the Australian Pesticides and Veterinary Medicines Authority's Labelling Working Group, which is considering improvements to chemical labelling.

The task force agreed to remove the veterinarian exemption from provisions on agricultural chemicals in Victoria and Queensland. Both jurisdictions have amended their legislation accordingly. The task force also agreed that there is a need to license aerial spraying businesses. A national working group is still

considering appropriate licensing conditions for these businesses, including the need for insurance.

Review of the Mutual Recognition Agreement and the *Mutual Recognition (Commonwealth Government) Act 1992*

The 2003 NCP assessment reported on the 1997-98 review of the Mutual Recognition Agreement (which relates to regulations applied to the sale of goods and the registration of companies) by a working group of the CoAG Committee on Regulatory Reform.

On 8 January 2003, the Australian Government commissioned the Productivity Commission to undertake a further review of the Mutual Recognition Agreement (and the Trans-Tasman Mutual Recognition Arrangement). The review arose from the requirement under the latter agreement that the agreement be reviewed after five years together with the second five-yearly review of the Mutual Recognition Agreement. The terms of reference of the review required the Productivity Commission to report on the efficiency and effectiveness of the Mutual Recognition Agreement and Trans-Tasman Mutual Recognition Arrangement in enhancing trade, workforce mobility and international competitiveness; whether any changes are required to improve their operation; and whether their scope should be broadened.

The Productivity Commission reported in October 2003 and found that the two agreements have been effective overall in assisting the integration of the 10 economies and promoting competitiveness. It proposed some improvements and that consideration be given to applying mutual recognition to the *use* of goods (as well as the sale of goods). The Productivity Commission recommended that the special exemptions that exist in areas such as therapeutic goods, hazardous substances, industrial chemicals, dangerous goods and consumer product safety standards should be retained, because the regulatory differences are justified. CoAG's Committee on Regulatory Reform prepared an interim report on the review for CoAG and the New Zealand Government, and CoAG asked for a final report by the end of September 2004. CoAG's decisions will determine whether jurisdictions have to make any legislative changes.

Review of the *Petroleum (Submerged Lands) Acts*

Australian, state and Northern Territory Acts regulate exploration for, and the development of, undersea petroleum resources. This legislation forms part of a national scheme. The Australia and New Zealand Minerals and Energy Council commissioned a national review of this legislation by a committee of

Australian Government, state and Northern Territory officials. This committee engaged an independent consultant, which reported in April 2000. In response to the report, the committee reported to the Australia and New Zealand Minerals and Energy Council on 25 August 2000 that the legislation is essentially pro-competitive and that any restrictions on competition (for example, in relation to safety, the environment and resource management) are appropriate given the net benefits to the community. The Australia and New Zealand Minerals and Energy Council endorsed the report at that meeting. The final report was made public on 27 March 2001, following consideration by the CoAG Committee on Regulation Reform.

Two specific legislative amendments flowed from the review. One addressed potential compliance costs associated with retention leases and the other expedited the rate at which exploration acreage can be made available to successive explorers. These amendments were incorporated in the Australian Government's *Petroleum (Submerged Lands) Legislation Amendment Act 2002*.

The national review of petroleum (submerged lands) legislation also recommended that the Australian Government rewrite its *Petroleum (Submerged Lands) Act 1967*. This project is under way. It is proposed that the legislation's name will change to the Offshore Petroleum Act. It expects to introduce the new legislation in early 2005. Amendments and rewrites of the counterpart state and Northern Territory legislation will follow the introduction of the Australian Government legislation. Chapter 7 provides information on the intentions of individual states and the Northern Territory in amending their submerged lands legislation.

The Australian Government's *Petroleum (Submerged Lands) Amendment Act 2003* established the National Offshore Petroleum Safety Authority, which will commence operation on 1 January 2005 and regulate safety in Australian marine jurisdiction and also in state and territory coastal waters. States and territories will amend their legislation during 2004 or early 2005 to confer powers and functions to the new authority.

Review of legislation regulating drugs, poisons and controlled substances legislation

The state, territory and Australian governments commissioned the Galbally Review to examine legislation and regulation that control access to, and the supply of, drugs, poisons and controlled substances. The legislation seeks to prevent poisoning, medical misadventure and the diversion of substances to the illicit drug market. The review report was finalised and presented to the Australian Health Ministers Conference, which was required by the review's terms of reference to forward the report to CoAG with its comments. The final report was publicly released in January 2001.

The review concluded that there are sound reasons for Australia to have legislative controls that regulate drugs, poisons and controlled substances. It found that enhancing uniformity across jurisdictions and the interface between pieces of legislation could improve the efficiency and administration of the regulations. The review's key recommendations included:

- transferring controls on advertising, product labelling and product packaging to Australian Government legislation
- developing mechanisms for promoting uniformity across jurisdictions
- improving the efficiency of administration by creating separate scheduling committees for medicines and poisons and closer links between scheduling and product evaluation.

The health Ministers referred the review report to the Australian Health Ministers' Advisory Council, which established a working party to develop a draft response to the review recommendations for CoAG's consideration. The advisory council endorsed the draft response and referred it to the Primary Industries Ministerial Council (which has an interest because implementation of the review's recommendations would affect the management of agvet chemicals). The Primary Industries Ministerial Council provided its comments in November 2002, allowing the working party to revise its draft response. In July 2003 the Australian Health Ministers' Advisory Council sent the draft response to the Australian Health Ministers Conference, which endorsed the response out of session in October 2003. In January 2004 the Australian Health Ministers Conference forwarded the response and the Galbally report (through the Department of Prime Minister and Cabinet) to CoAG for endorsement during 2004. The Australian Government Minister for Health wrote to the Prime Minister on 7 June 2004 asking that the response be progressed through CoAG out of session. The Prime Minister forwarded the Galbally report and the proposed CoAG response to its recommendations to Premiers and Chief Ministers for out-of-session consideration on 14 July 2004. The proposed CoAG response provides for each jurisdiction's implementation of the recommendations over a 12-month period from CoAG's endorsement.

Since the release of the Galbally report, the Australian and New Zealand governments have agreed to establish a joint agency (the Trans-Tasman Therapeutic Products Agency) for the regulation of therapeutic goods. The agency will work under a joint regulatory framework, which is being developed. The Australian Government's implementation of the Galbally recommendations may be delayed until 2005, when it will be incorporated in the new trans-Tasman legislation.

The Council notes that the new legislation underpinning the Trans-Tasman Therapeutic Products Agency will need to be in place before 1 July 2005, when the agency is expected to commence operation, and that states and territories will need to amend their drugs, poisons and controlled substances legislation, where necessary, to appropriately reference relevant parts of this new legislation.

Review of food Acts

The Australian Government's *Food Standards Australia New Zealand Act 1991* establishes Food Standards Australia New Zealand (FSANZ) which is responsible for developing, varying and reviewing the Food Standards Code. The code sets standards for the composition and labelling of food. The objectives of the food Acts in each Australian state and territory and New Zealand are to ensure compliance with food standards in each jurisdiction. The Australia New Zealand Food Standards Council (now the Australia New Zealand Food Regulation Ministerial Council) established a review of this legislation in 1996. The Australia New Zealand Food Authority (now FSANZ) coordinated the review and included representatives of the jurisdictions on the review panel.

The authority released the review report in May 1999. The review recommended removing some restrictive provisions of the food Acts (for example, opening up food inspections to third party auditors), but retaining certain exclusive powers where government enforcement is appropriate.

On 3 November 2000 CoAG agreed to the food regulatory reform package, of which the Model Food Act is a part. In addition, CoAG signed an Intergovernmental Agreement on Food Regulation, agreeing to implement the new food regulation system. All jurisdictions agreed to use their best endeavours to introduce legislation based on the Model Food Act to their respective Parliaments by November 2001.

In its previous NCP assessments, the Council assessed the Australian Government as having met its CPA obligations in connection with the development of the Food Standards Australia New Zealand Act and the joint Food Standards Code (renamed the Australia New Zealand Food Standards Code in 1995). All states and territories except Western Australia have modified their food legislation and met their CPA obligations in this area.

Review of pharmacy regulation

The CoAG commissioned a major national review of restrictions on competition in state, territory and Australian Government pharmacy legislation in 1999. The National Review of Pharmacy Regulation, chaired by Warwick Wilkinson AM, reported to governments in February 2000.

In relation to state and territory pharmacist legislation, the review recommended, among other things:

- retaining restrictions on who may own a pharmacy. It found that these restrictions provide a net public benefit to the community through improved professional conduct of pharmacy practice.

- lifting restrictions on the number of pharmacies that a pharmacist can own, but continuing to require pharmacist supervision of pharmacy operations. It found that numerical restrictions are arbitrary, artificial, easy to breach and difficult to enforce, and that requirements for pharmacist supervision of pharmacies ensure the provision of safe and competent services.

- continuing to permit friendly societies to own pharmacies, but prohibiting those not already operating in a given jurisdiction from operating pharmacies in that jurisdiction in the future.

CoAG referred the national review to a working group comprising senior Australian Government, state and territory officers. The working group released its report in August 2002, recommending that CoAG accept most of the national review's recommendations. In particular, the working group supported the recommendation to remove restrictions on the number of pharmacies that a pharmacist may own, agreeing that:

> … *[i]t provides the industry with an opportunity to develop more efficient pharmacy businesses… [and]… there are appropriate mechanisms already in place in the broader community to safeguard against the ill effects of market dominance*. (CoAG 2002, pp. 2–3)

The working group questioned, however, the evidence supporting the national review's conclusion that restricting pharmacy ownership is in the public interest. It found that the national review, in coming to this conclusion, was hampered by a lack of evidence and did not seem to examine the different treatment of business ownership in the context of other Australian professions or overseas experience. It also questioned the value of ownership requirements in view of the review's recognition that requirements for pharmacists' supervision of pharmacies ensure safe and competent pharmacy services.

Nonetheless, the working group recommended that CoAG accept the recommendation to retain the ownership restrictions. It considered that the impact of deregulating ownership could be too disruptive for the industry in the short term, given the other significant reforms proposed by the review (including proposals to limit restrictions on commercial aspects of pharmacy practices and to remove caps on the number of pharmacies that a pharmacist may own).

The working group also proposed that CoAG reject the recommendation to prevent friendly societies from operating pharmacies in jurisdictions where they are not already present. It considered that the only issue that should determine the extent of friendly societies' participation in community pharmacy is whether they can run good pharmacies. On this basis, it concluded that friendly society pharmacies, as a sector, should be permitted to operate in the same way as other pharmacist proprietors.

CoAG subsequently endorsed the recommendations of the working group, with the Prime Minister noting that:

> … *implementation of the recommendations of the report by state or territory governments will help ensure the continued provision of professional pharmacy services and high quality care in the community*. (Howard 2002)

The Australian Government reinforced its commitment to implementing CoAG outcomes in the context of the Third Community Pharmacy Agreement between the Australian Government and the Pharmacy Guild of Australia, in which it noted:

> *During the period of this Agreement, the parties are committed to achieving … continued development of an effective, efficient and well-distributed community pharmacy service in Australia which takes account of the recommendations of the Competition Policy Review of Pharmacy and the objectives of National Competition Policy…* (Department of Health and Ageing 2000, p. 8)

The Council's assessment of each state's and territory's response to the CoAG national review processes is outlined in the relevant jurisdictional chapters.

Review of legislation regulating the architectural profession

In November 1999 the Productivity Commission commenced a nine-month review of legislation regulating the architectural profession on behalf of all states and territories except Victoria. The Australian Government released the final report on 16 November 2000. The report found that the costs of current regulation outweigh the benefits. The recommended approach was to repeal state and territory architects Acts after an appropriate (two-year) notification period to allow the profession to introduce self-regulation involving a national, nonstatutory certification and course accreditation system that meets the requirements of Australian and overseas clients.

A national working group comprising representatives of all states and territories was convened to recommend a consolidated response to the Productivity Commission's findings. The working group supported the Productivity Commission's broad objectives, but rejected the review's recommended approach as not being in the public interest. It recommended, instead, adopting the alternative approach — namely, adjusting existing legislation to remove elements deemed to be anticompetitive and not in the public interest.

The joint response provided a framework that state and territory governments adopted and that the Australian Procurement and Construction Ministerial Council endorsed in 2002. The framework establishes the basis for the Council's assessment of jurisdictions' compliance in this area.

The Council's assessment of each state's and territory's response, apart from Queensland's, is provided in the relevant jurisdictional chapters. The Council

found in the 2003 NCP assessment that Queensland had met its obligations in this area.

Review of radiation protection legislation

In December 1998 CoAG agreed to conduct a single joint national NCP review of radiation protection legislation. The Australian Radiation Protection and Nuclear Safety Agency (ARPANSA) coordinated the review. One of ARPANSA's aims is to promote national uniformity in radiation protection and nuclear safety policy and practices. To this end, it formed the National Uniformity Implementation Panel (Radiation Control) in August 1998 as a working group of its Radiation Health Committee. Comprising officers from the Australian Government, state and territory radiation protection agencies, the panel is the steering committee for the NCP review.

ARPANSA released an issues paper and a draft report for public comment during 2000 and 2001, and the final report on 8 May 2001. The review found the current legislative framework for radiation protection to be appropriate. ARPANSA considered that retaining a generally prescriptive regulatory approach is necessary to protect public health and safety and the environment from the harmful effects of radiation. The review report thus recommended retaining most of the existing restrictions on net public benefit grounds. The exception relates to advertising and promotional activities (in Western Australia only). The report included recommendations for further action to improve the efficiency of the legislation.

In May 2001 ARPANSA presented jurisdictions' responses to the report recommendations to the Australian Health Ministers Advisory Council, which approved the final list of recommendations on 31 May 2002 and also an implementation plan for 12 projects for various jurisdictions to undertake.

The National Directory for Radiation Protection was published by ARPANSA in August 2004 and is available on its website at http://www.arpansa.gov.au/rps6.htm. The National Directory provides the best practice template that will enable states and territories to complete their legislative and regulatory changes. The New South Wales Government approved amendments to its radiation control legislation in 2002 to implement the recommendations of the national NCP review. The *Radiation Control (Amendment Act) Act 2002* commenced in August 2002. The Northern Territory introduced its Radiation Protection Bill to the Legislative Assembly in February 2004, and the Assembly passed it in March 2004.

Review of trustee corporations legislation

The Standing Committee of Attorneys-General is conducting an NCP review of the regulation of trustee companies, with a view to replacing the current state regulation with a national scheme of complementary laws. The standing

committee released a consultation paper on a draft uniform Bill in May 2001. The consultation paper discusses the key features of the trustee corporations industry, the main provisions of the draft Bill, and options for future regulation of the industry. The draft Bill seeks to provide for regulation of trustee corporations that is commensurate with the nature of the industry and the risks posed to consumers by defaults of trustee corporations.

Underpinning the NCP report and the draft Bill is the assumption that the Australian Government, through the Australian Prudential Regulatory Authority (APRA), would undertake the prudential supervision of trustee companies. The New South Wales Attorney-General's Department, which provides the secretariat to the Standing Committee of Attorneys-General, informed the Council in May 2003, however, that the Australian Government had advised in April 2003 that APRA would not regulate trustee corporation activities that fall outside the scope of Australian Government legislation. Some states and territories sought reconsideration of this decision by the Australian Government. At the standing committee meeting in November 2003, the Australian Government indicated it may reconsider APRA regulation and agreed to take a final submission from the states and territories. The submission was made by the New South Wales Attorney-General on behalf of other states and territories on 6 February 2004. At the standing committee meeting on 18–19 March 2004, the Australian Government Attorney-General indicated that the Australian Government would deliberate on the issue.

There has been ongoing dialogue between the New South Wales Attorney-General's Department and the Australian Government Attorney-General's Department and Treasury during which further information was provided as part of the states' and territories' submission. States and territories are finalising model trustee corporations legislation and have committed to take all necessary steps to implement the uniform scheme once the Australian Government reaches a conclusion. If the Australian Government again declines to undertake the prudential regulation of trustee companies, New South Wales considers that steps can be taken to quickly finalise the reform of the legislation based on the draft model, with states and territories seeking external advice on the form that prudential standards could take.

Review of travel agents legislation

The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a working party, to review legislation regulating travel agents. The Ministerial council released the review report for public comment in August 2000. The report recommended removing entry qualifications for travel agents, maintaining compulsory insurance and dropping the requirement for agents to hold membership of the Travel Compensation Fund (the compulsory insurance scheme). It preferred a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund. Other recommendations included increasing the current licence exemption threshold to $50 000 and removing the exemption

for Crown-owned travel agency businesses from licensing requirements. At the time when the report was prepared, a person was exempt from travel agents licensing in most jurisdictions if the total value of the travel arrangements made by that person in a financial year did not exceed $30 000.

The Western Australian Department of Consumer and Employment Protection, in liaison with the CoAG Committee on Regulatory Reform, coordinated the preparation of a response to the review. The working party led by Western Australia, which reported to Ministers in August 2002, supported all of the review's recommendations except:

- the introduction of a competitive insurance model, because the working party had concerns about the continuity of private supply, premium levels, price volatility and the risk minimisation strategies of private insurers. It preferred the option of retaining the Travel Compensation Fund but advised that the Ministerial council should review contribution arrangements to establish a risk based premium structure and to make prudential and reporting arrangements more equitable.

- the removal of entry qualifications. The working party recommended instead that qualification requirements be reviewed and amended to ensure uniformity. It argued that this uniformity would overcome the problems identified in the review report.

The Ministerial Council on Consumer Affairs endorsed the working party's recommendations in November 2002, and the Standing Committee of Officials of Consumer Affairs will oversee implementation of the reforms. This implementation has been delayed by the need to finalise at a national level the issues raised by the working party (issues relating to contributions to the Travel Compensation Fund, prudential and reporting requirements, and uniformity of qualifications). All states and territories are progressing towards implementing the working party's recommendations (see the relevant jurisdictional chapters).

Review of consumer credit legislation

In 1993 state and territory governments entered into the Australian Uniform Credit Laws Agreement, which provides for the adoption of a national Consumer Credit Code. The code came into effect in November 1996, replacing various state and territory statutes governing credit, money lending and aspects of hire purchase.

The code was enacted by template legislation, with Queensland being the lead legislator. All jurisdictions except Western Australia and Tasmania enacted legislation applying the Consumer Credit Code as in force in Queensland. Western Australia enacted alternative consistent legislation that, until recently, required constant amendment by the Western Australian Parliament to remain consistent when the code is amended in Queensland. On 30 June 2003, however, Western Australia adopted the template

legislation system favoured by all other states and territories (except Tasmania, which enacted a modified template system).

State and territory governments have jointly undertaken an NCP review of the Consumer Credit Code legislation. (In addition to this review, several jurisdictions have identified other consumer credit related legislation for review, possible review or amendment.) The national review of the Consumer Credit Code commenced in late 1999 based on a review process approved by the CoAG Committee on Regulatory Reform. The review was undertaken by an independent consultant steered by a working party of representatives from each participating jurisdiction.

The NCP review followed the post-implementation review, which recommended legislative changes, some of which may have an impact on competition. The Council understands that the NCP review addressed those recommendations and that the Ministerial Council on Consumer Affairs considered the two reports together.

A draft report of the national NCP review of the Consumer Credit Code was released for public consultation in December 2001. It recommends maintaining the current provisions of the code; reviewing its definitions to bring term sales of land, conditional sale agreements, tiny term contracts and solicitor lending within the scope of the code; and enhancing the code's pre-contractual disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee, which is facilitating the resolution of certain issues (as suggested by the NCP review) emanating from the post-implementation review (for example, credit issues relating to solicitors, electronic commerce and general disclosure provisions), following which Queensland will enact template legislation. Queensland began drafting the revised legislation relating to definitions in May 2004, and had anticipated introducing the Bill to Parliament in the second half of 2004. More recent advice, however, indicates that Queensland was still drafting the legislation in October 2004.

When the draft is completed, the Uniform Consumer Credit Code Management Committee will present it to the Ministerial Council on Consumer Affairs for endorsement and then undertake a public consultation process. The legislation will be introduced to the Queensland Parliament. Automatic updating of relevant legislation (through a 'mirror legislation' process) will then occur in all other states and territories except Tasmania, which will enact legislation that is consistent with the template legislation. The New South Wales parliamentary counsel's office will draft code revisions relating to pre-contractual disclosure. The Uniform Consumer Credit Code Management Committee provided drafting instructions to the New South Wales office in spring 2004. The Council understands that these proposed legislative changes on disclosure matters will also be subject to Ministerial Council on Consumer Affairs approval and public consultation before being incorporated in template legislation.

The full range of Consumer Credit Code changes arising from the post-implementation review and the national review are unlikely to be completed until 2005.

Review of trade measurement legislation

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, along with controls for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. Governments (except Western Australia) agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs. Participating jurisdictions have since progressively enacted the uniform legislation. The legislation places the onus on owners to ensure instruments are of an approved type and maintained in an accurate condition.

Governments identified that the national scheme involves legislation that may have an impact on competition. As a result, a national NCP review of the scheme for uniform trade measurement legislation is being undertaken. Some jurisdictions intend to review the Acts administering the national scheme, in addition to those Acts applying it.

A scoping paper for the national NCP review concluded that restrictions on the method of sale appear to have little adverse effect on competition and to provide benefits for consumers. The one exception concerns restrictions on the sale of non-prepacked meat. A draft report on such meat was circulated to jurisdictions during 2002, and the review's working group has since finalised the report. The working group consulted with meat sellers and associations, consumer associations, advocate groups and other stakeholders in early 2003, then reported to the Standing Committee of Officials on Consumer Affairs in November 2003. On 28 November 2003 the standing committee approved the final public benefit test report on the sale of non-prepacked meat, endorsed the report recommendations and recommended the final report and its recommendations to the Ministerial Council on Consumer Affairs for approval and public release. The consultation process also gave rise to a new issue concerned with whether seafood and poultry should be included in the definition of meat. In May 2004 the Ministerial Council on Consumer Affairs endorsed the recommendations of the final report and agreed to its public release. Although Western Australia is not a signatory to the uniform trade measurement scheme, it also agreed with the final report. Consumer Affairs Victoria will review the meat issue. When the Ministerial council agrees to the suggested national approach to trade measurement, implementation of the agreed approach is expected to follow. This process is unlikely to be finalised in 2004.

Because the national review and reform process has not been completed, the States and Territories involved have yet to meet their CPA obligations. This is also the case for Western Australia, which has decided to replace its legislation with a new Act based on the nationally agreed model.

In addition to the national review of trade measurement legislation, governments listed their trade measurement (administration) legislation for review. For this legislation, the Council has previously assessed Queensland, Tasmania, the ACT and the Northern Territory as having met their CPA clause 5 obligations. New South Wales, Victoria, Western Australia and South Australia are awaiting the national response before implementing reforms (see the relevant jurisdictional chapters).

Legal services

Reforms to the legal profession have been pursued at the national level and the state and territory level. At the national level, on 4 May 2004, the Standing Committee of Attorneys-General released the model provisions on the national legal profession, which will form the basis for improving consistency across the legal profession in different jurisdictions.[1]

While the provisions under the model Bill do not stem from NCP requirements, enhanced consistency in requirements across jurisdictions can promote increased competition in the delivery of services to consumers. The Bill also addresses particular areas in which NCP reviews relating to legal profession regulation have made recommendations. These include the implications for addressing restrictions on competition in areas such as admission and rights to practise, and the ability of lawyers to practise through corporations and in partnerships with other professionals.

The Bill also notes that '[d]evelopment will continue of a scheme relating to professional indemnity insurance that will facilitate interstate practice. In the interim, there will be jurisdictional variation relating to insurance requirements' (SCAG 2004, part 9).

The Council's assessment of each state's and territory's review and reform progress in relation to the legal profession is outlined in the relevant jurisdictional chapter.

[1] The Australian Government Office of Regulation Review noted in its 2004 report to the Council on compliance with national standard setting (see Appendix A) that a regulatory impact statement (consistent with CoAG guidelines) was not prepared for consultation on the proposed core model provisions or the decision by the Standing Committee of Attorney-Generals to endorse them. This matter is noted in chapter 5 in the section on implementation agreement obligations.

Appendix A Australian Government Office of Regulation Review: report on compliance with national standard setting

This appendix contains the Commonwealth Office of Regulation Review's *Report to the National Competition Council on the setting of national standards and regulatory action: 1 April 2003 – 31 March 2004*. The Office of Regulation Review provided this report to the Council on 28 June 2004.

The Office of Regulation Review works closely with Ministerial councils and other standard-setting bodies, advising them on applying COAG principles and guidelines for setting standards and regulations. The office advises these bodies on the adequacy of their regulatory impact statements before they are circulated to affected parties, and again before the final standard-setting decisions are made. The office's involvement with the Ministerial councils and standard-setting bodies informs the preparation of its report to the Council.

Prior to providing its report to the Council, the office circulated a draft report to Ministerial councils and other national standard setting bodies for comment. The office also provided the draft report to state and territory competition policy units and regulatory review units, and to the New Zealand Government (New Zealand is represented on several of the Ministerial councils and standard setting bodies). This consultation process assists the final report's accuracy and its appraisal of the regulatory impact analysis process undertaken before a decision is made on each new national standard or regulation.

The Office of Regulation Review's report to the Council is discussed in chapter 5.

1 Background to the Office of Regulation Review's report

The requirements of the Council of Australian Governments

In April 1995, the Council of Australian Governments (COAG) agreed to apply a nationally consistent assessment process to proposals of a regulatory nature considered by all Ministerial Councils and national standard-setting bodies (NSSBs). The agreed assessment process is set out in the COAG *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* (COAG 1997 as amended). The major element of the assessment process is the preparation of Regulatory Impact Statements (RISs).

A RIS documents the policy development process and considers alternative approaches to resolve identified problems, and assesses the impacts of each option on different groups and on the community as a whole. A COAG RIS needs to be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts. The first stage RIS is used as part of community consultation and the second or final RIS, reflecting feedback from the community, assists in the decision-making process. The objective of these COAG *Principles and Guidelines* is to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The role of the Office of Regulation Review

The Office of Regulation Review (ORR) advises decision makers on the application of the COAG *Principles and Guidelines* and monitors and reports on compliance with these requirements. This includes advising whether a RIS should be prepared and assessing RISs prepared for Ministerial Councils and NSSBs. The ORR assesses the RISs at two stages: before they are released for consultation and again prior to a decision being made. At each stage it advises the decision-making body of its assessment. The ORR's assessment considers:

- whether the Guidelines have been followed;
- whether the type and level of analysis is adequate and commensurate with the potential economic and social impact of the proposal; and
- whether alternatives to regulation have been adequately considered.

The ORR makes its assessment of the application of the COAG *Principles and Guidelines* independently of the views of any particular jurisdiction. Further, the ORR does not comment on the merits of regulatory proposals being put to decision-making bodies — its prime focus is on the regulatory best practice processes as detailed in the Guidelines.

COAG's *Agreement to Implement the National Competition Policy and Related Reforms* (COAG 1995) also requires the ORR to advise the National Competition Council (NCC) on compliance with the COAG *Principles and Guidelines*. The NCC takes this advice into account when considering its recommendations to the Australian Government Treasurer regarding conditions and amounts of competition payments from the Australian Government to the states and territories. This ORR report addresses this obligation for the period 1 April 2003 – 31 March 2004, and is the fourth such report by the ORR to the NCC.

2 The focus and scope of the ORR's report

In its reports to the NCC, the ORR excludes from the COAG RIS requirements a number of categories of regulatory decisions made by Ministerial Councils or national standard-setting bodies. The first category involves decisions which have a low significance in terms of the scope and magnitude of community impacts. For such minor or machinery regulations, the RIS process may not add significant additional value to the policy development process in a cost-effective manner. The second category comprises decisions that are more of an administrative than of a regulatory nature. These decisions are essentially about the application of existing regulatory frameworks without consideration of other regulatory options.

Further, where a meeting of Ministers or a national standard-setting body considers a report that merely 'brainstorms' a regulatory subject matter rather than seeks a specific regulatory decision, a COAG RIS is not required beforehand for consideration by Ministers.

In most of the remaining cases, there is general consensus between the ORR and the relevant decision makers on the types of regulatory decisions and agreements covered — and not covered — by the COAG *Principles and Guidelines*. Also, there is usually agreement regarding how the COAG RIS requirements should be applied. However, the application of the COAG requirements is not always clear cut. Some explanation of these complex areas, and their relevance to the ORR's report, is provided below.

Scope of decisions covered by the COAG requirements

The COAG *Principles and Guidelines* cover regulatory decisions that:

> … *would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done* … . (COAG Principles and Guidelines, p.4)

While noting that Ministerial Councils and national standard-setting bodies commonly reach agreement on the main elements of a regulatory approach or standards which are then given force in Australian jurisdictions through principal or subordinate legislation, COAG went further by defining regulation to include:

> … *the broad range of legally enforceable instruments which impose mandatory requirements upon business and the community as well as those voluntary codes and advisory instruments … for which there is a reasonable expectation of widespread compliance.* (COAG Principles and Guidelines, p.4)

As such, the scope of regulatory decisions covered by COAG's requirements is wide, and includes agreements on standards and measures of a quasi-regulatory nature — such as endorsement of industry codes of conduct — as well as on national regulatory approaches implemented by legislation.

Decision-making groups covered by the COAG requirements

The COAG Principles and Guidelines:

> … *apply to decisions of Ministerial Councils and inter-governmental standard-setting bodies, however they are constituted, and include bodies established statutorily or administratively by government to deal with national regulatory problems.* (COAG Principles and Guidelines, p.4)

While Councils of Ministers are usually standing bodies — and some are established by statute — there are from time to time ad hoc bodies of Australian Government, state and territory Ministers (and sometimes delegated senior officials) established to address and resolve regulatory issues considered to have a national dimension. These ad hoc bodies can be required to consider proposals that will result in significant regulatory impacts. (At any one time there are typically about 40 COAG decision-making forums.)

In view of COAG's broad definition of what constitutes an inter-governmental body for the purposes of the COAG requirements, the ORR advises such

bodies of the need to comply with the COAG Principles and Guidelines when reviewing and considering regulatory issues.

Further, from time to time COAG itself makes decisions dealing with national regulatory problems. While COAG is not considered to be bound by the COAG Principles and Guidelines, the ORR's advice has been that the responsibility for compliance with the COAG requirements rests with the body preparing or transmitting regulatory proposals for consideration by COAG.

Multi-stage decision making and the RIS requirements

In some cases, a Ministerial Council or national standard setting body, in addressing a national regulatory problem, may make decisions in several sequential stages. This is more likely to occur for highly complex and significant regulatory issues. For example, a Ministerial Council may consider a range of regulatory options to deal with an identified problem. Having made an initial decision on whether and how it wishes to intervene, the Council or standard-setting body then separately considers implementation options.

This situation has led to concern that two or more RISs may be required, one for the key decision and follow-up RISs for the subsequent implementation decisions to accord with the COAG *Principles and Guidelines*. The ORR's approach in such situations is that, where an adequate RIS has been prepared for a regulatory decision made by a Ministerial Council or national standard-setting body, a follow-up or subsequent RIS is not required when only the detail of the regulation is to be put in place to implement the decision. However, a subsequent RIS would be required where follow-up regulatory decisions require further significant new regulation, and if the likely impacts of feasible regulatory options are significant and can be assessed. Whether the implementing regulation for a particular matter requires a RIS should be determined in consultation with the ORR on a case by case basis.

Decisions requiring implementation in states and territories

For decisions requiring further regulatory decision by the states and territories, including the development of implementing legislation, each jurisdiction may require the development of state or territory specific RISs to meet their individual RIS requirements. In the past, this has raised the question as to whether the preparation of a COAG RIS is duplicative and therefore unwarranted.

COAG's RIS requirements apply to the initial decision by the Ministerial Council or national standard-setting body. Not only does the COAG RIS guide the overarching decision taken by the inter-governmental body, it can also guide further decisions taken in each jurisdiction from a carefully analysed starting point. It is also the case that states and territories can, where applicable, forgo their own RIS requirements if an adequate COAG RIS has been prepared.

3 Matters for which COAG's requirements were met

Table A.1 documents the 28 decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were fully met. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

Table A.1: Cases where COAG RIS requirements were met

Measure	Body responsible	Date of decision
1. Livestock Identification and Tracing Systems	Primary Industries Ministerial Council (PIMC)	11 April 2003
2. National Ban on Routine Tail Docking of Dogs	PIMC	11 April 2003
3. Amendments to the National Exposure Standard for Benzene	National Occupational Health and Safety Commission (NOHSC)	24 April 2003
4. Amendments to the Approved Criteria for Classifying Hazardous Substances	NOHSC	24 April 2003
5. Amendments to the National Exposure Standards for Atmospheric Contaminants in the Occupational Environment	NOHSC	24 April 2003
6. National Code of Practice for the Preparation of Material Safety Sheets	NOHSC	24 April 2003
7. Australian Builder's Plate (compliance plates for recreational vessels)	Australian Transport Council (ATC)	1 May 2003
8. Australian Road Rules Amendment Package 2003	ATC	30 June 2003
9. Building Code of Australia Amendment 13 Volume 1	Australian Building Codes Board	1 July 2003
10. Review of Processing Requirements of Uncooked Comminuted Fermented Meat	Food Standards Australia New Zealand	2 July 2003
11. Gene Technology (Recognition of Designated Areas) Principle 2003	Gene Technology Ministerial Council	3 July 2003
12. Amendments to the chrysotile asbestos exposure standard	NOHSC	23 July 2003
13. Dangerous Goods – Transport Emergency Response Plan Guidelines	ATC	1 August 2003
14. 50 km/hour National Default Urban Speed Limit	ATC	1 September 2003
15. TTMRA – ADR Review – ADR 12 – Glare Reduction in the Field of View	ATC	1 September 2003
16. TTMRA – ADR Review – ADR 15 – Demisting of Windscreens	ATC	1 September 2003
17. TTMRA – ADR Review – ADR 71 – Temporary Use Spare Tyres	ATC	1 September 2003
18. Deletion of Australian Design Rule (ADR) 24/02 – Tyre and Rim Selection	ATC	1 September 2003
19. Deletion of ADR 20/00 – Safety Rims	ATC	1 September 2003

(*continued*)

Table A.1 continued

20.	Review of the 1994 Load Restraint Guide (for vehicles)	ATC	1 October 2003
21.	National Compliance and Enforcement Provisions for the National Road Transport Law: Road Transport Reform (Compliance and Enforcement) Bill	ATC	3 October 2003
22.	National Code of Practice for the Control of Work Related Exposure to Hepatitis and HIV (blood borne) Viruses	NOHSC	15 October 2003
23.	National Standard for Commercial Vessels – Sub section 7A: safety equipment	ATC	1 November 2003
24.	Mandatory Food Safety Programs for High Risk Sectors, and Policy Guidelines to Improve Food Safety Management in Australia	Australia New Zealand Food Regulation Ministerial Council (ANZFRMC)	12 December 2003
25.	Minimum Energy Performance Standards for Electricity Distribution Transformers	Ministerial Council on Energy	4 February 2004
26.	Heavy Vehicle Driver Fatigue	ATC	1 March 2004
27.	Heavy Vehicle NHVAS Advanced Fatigue Management Module	ATC	1 March 2004
28.	National Safety and Infrastructure Protection Performance Standards (for heavy vehicles)	ATC	1 March 2004

Source: ORR estimates

4 Matters for which COAG's requirements were partially met

Table A.2 documents the two decisions made during the period 1 April 2003 – 31 March 2004 where the COAG RIS requirements applied and were partially met; that is, there has been qualified compliance with the requirements. Commentary on the individual decisions, including the reasons why the decisions were considered to have partially met the requirements, is provided below the table.

Table A.2: Cases of qualified compliance with the COAG RIS requirements

Measure	Body responsible	Date of decision
1. New National Regulatory Framework for In Vitro Diagnostic Devices	Australian Health Ministers' Conference	1 July 2003
2. Professional standards legislation	Ministerial Meeting on Insurance Issues	6 August 2003

Source: ORR estimates

Commentary on partially compliant decisions

New national regulatory framework for in vitro diagnostic devices

On 1 July 2003, the Australian Health Ministers' Conference agreed to a new national regulatory framework for in vitro diagnostic devices. While the proposal was the subject of consultation, the ORR had advised that a consultation RIS was required. The discussion paper prepared, whilst detailed, did not substitute for an adequate RIS. However, a final RIS assessed by the ORR as adequate was available to support the decision to adopt the proposed framework.

Implementation of a national system of professional standards legislation

The Ministerial Meeting on Insurance Issues considered a model for implementing a national system of professional standards legislation (PSL) on 6 August 2003 and confirmed the commitment of all jurisdictions to implementing PSL on a nationally consistent basis. The ORR was not provided with forward notice and a consultation RIS was not prepared. However, broad consultation with professional groups and the insurance industry had taken place and it is relevant that professional standards legislation was already in place in at least one jurisdiction. A final RIS assessed by the ORR as adequate was prepared and available to support the decision to endorse a national model.

5 Matters for which COAG's requirements were not met

Table A.3 indicates that, during the period 1 April 2003 – 31 March 2004, the COAG RIS requirements were not met at either the consultation stage or at the decision stage in four cases. Commentary on the individual decisions, including the reasons why the decisions were considered to be non-compliant, is provided below the table.

Table A.3: Cases where COAG RIS requirements were not met

Measure	Body responsible	Date of decision
1. Policy Guideline for the Regulation of Caffeine in Food	Australia New Zealand Food Regulation Ministerial Council	4 April 2003
2. Proportionate liability	Ministerial Meeting on Insurance Issues	6 August 2003
3. Endorsement of model provisions for the regulation of the legal profession	Standing Committee of Attorneys-General	7 August 2003
4. Endorsement of the Australian Retailers Association Code of Practice for the Management of Plastic Bags	Environment Protection and Heritage Council	2 October 2003

Source: ORR estimates

Commentary on non-compliant decisions

Policy guideline for the regulation of caffeine in food

On 4 April 2003, the Australia New Zealand Food Regulation Ministerial Council considered controls over the addition of caffeine to food, and agreed to maintain the current additive permissions for caffeine, while restricting the use of new food products containing non-traditional caffeine rich ingredients to boost their caffeine content beyond the current provisions.

A RIS was not prepared for community consultation on the proposal as required by the COAG requirements. Although a final RIS was drafted for the decision makers, the ORR assessed the RIS as not having an adequate level of analysis. This was chiefly due to inadequacies in the specification of the problem and in the analysis of individual options.

Proportionate liability

On 6 August 2003, the Ministerial Meeting on Insurance Issues agreed to a national model for proportionate liability where economic loss or property

damage occurs through professional negligence. This will replace, throughout all Australian jurisdictions, the established legal principle of joint and several liability, and impacts on businesses throughout Australia in dealing with the risk of, and losses from, the negligent provision of services. The decision was informed by the work done by the Heads of Treasuries Insurance Issues Working Group in developing the proposal.

A COAG RIS was not prepared for consultation or at the decision-making stage. The ORR was not given forward notice of the proposal.

National legal profession model bill

On 7 August 2003, the Standing Committee of Attorneys-General (SCAG) endorsed model provisions for nationally consistent laws for the regulation of Australia's legal profession. A COAG RIS was not prepared for either consultation on the proposed core model provisions or the decision by SCAG to endorse them. In addition, the ORR was not given forward notice of the proposal.

The National Legal Profession Model Bill has since been circulated. The ORR notes that it is intended that a COAG RIS be prepared to examine the impacts of the model provisions. A joint working party, comprising the legal profession, state, territory and Australian Government officers, is to advise SCAG on the operation and implementation of the Bill and on proposed amendments to its core provisions.

Code of practice for the management of plastic bags

On 2 October 2003, the Environment Protection and Heritage Council (EPHC) decided to endorse the Australian Retailers' Association Code of Practice for the Management of Plastic Bags. The Code aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia.

A COAG RIS was not prepared in relation to the proposal, for consultation or for the final decision.

The ORR examined documents provided to the Council for its final decision and found that, while a preliminary impact analysis of several legislative options was prepared, this did not extend to analysis of the preferred option.

6 Trends in compliance with COAG RIS requirements

At consultation

The COAG *Principles and Guidelines* state that "public consultation is an important part of any regulatory development process" and an adequate COAG RIS is required for consultation. These requirements, however, make it clear that the depth of analysis in the consultation RIS need not be as great as in the RIS for decision makers. In many cases, the focus of the consultation RIS will be on identification of the problem and objectives and a preliminary assessment of feasible options. The RIS for the decision-making stage should reflect the additional information and views collected from those consulted, and provide a more complete impact analysis.

While COAG requires a RIS for consultation and for the final decision, the ORR's practice has been that an adequate consultation RIS is only one consideration in whether a matter is compliant overall. In the absence of an adequate consultation RIS, the ORR has in determining overall compliance taken into account the extent of community consultation that took place on the proposal and the level of analysis in the final RIS (relative to the impacts of the proposal). The ORR has applied this approach as a transitional measure to assist in the implementation by Ministerial Councils and NSSBs of the COAG *Principles and Guidelines*.

In relation to decisions covered by this report, compliance at consultation was less than at the decision-making stage. This is notwithstanding the lighter RIS requirements for adequacy at the consultation stage.

Eighty-two per cent of matters had an adequate consultation RIS — this compares to 88 per cent compliance at final decision (see below).

This is the first time that the ORR has reported compliance with COAG's requirement for a consultation RIS. It is proposed to include such compliance information in the ORR's next report to the NCC covering decisions made in the year to 31 March 2005.

At the decision-making stage

Of the 34 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2004 (the ORR's fourth report to the NCC), compliance with COAG's requirements was 88 per cent. This is comparable to the compliance rate of 89 per cent for 27 decisions made during the previous reporting period (the ORR's third report to the NCC).

(For consistency with the reporting of cases in previous reporting periods, the cases listed in Table A.2, where RIS requirements were partially met, are treated as compliant for the purposes of this assessment.)

For significant regulatory matters

As discussed in earlier ORR reports to the NCC, an important consideration in measuring compliance — and changes in compliance over time — is the degree of significance of the decisions made in each period. The ORR has classified each regulatory proposal that requires a RIS as of greater or lesser significance. The criteria for this classification is based on:

- the nature and magnitude of the problem and the regulatory proposals for addressing it; and
- the scope and intensity of the proposal's impact on affected parties and the community.

Classifying regulatory proposals in this way provides a better basis on which to apply the 'proportionality rule' that the extent of RIS analysis should be commensurate with the magnitude of the problem and the likely impacts of any regulatory response.

Of the 34 regulatory decisions reported here, seven were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

The Gene Technology Ministerial Council's decision to issue a policy principle which would recognise state/territory rights to designate under state/territory law special areas that are either for genetically modified (GM) or non-GM crops for marketing purposes — the Gene Technology Regulator must then act consistently with the policy principle;

The agreement by the Ministerial Meeting on Insurance Issues to implement professional standards legislation on a nationally consistent basis, by which an upper limit (cap) is placed on liability payouts to plaintiffs for economic loss where professional groups meet legislated standards;

The decision by the Australia New Zealand Food Regulation Ministerial Council (ANZFRMC) that food safety programs be mandatory for the highest risk sectors in Australia, and that policy guidelines to improve food safety management be adopted in Australia;

The Australian Transport Council's decision to adopt performance based standards for heavy vehicles — this involved the adoption of twenty new standards, sixteen relating to vehicle safety, and four to protection of infrastructure;

The endorsement by the Environment Protection and Heritage Council (EPHC) of the Australian Retailers' Association Code of Practice for the

Management of Plastic Bags, which aims to improve recycling rates for, and reduce the number of, high density polyethylene plastic bags used in Australia;

The agreement by the Ministerial Meeting on Insurance Issues to a national model for proportionate liability, where economic loss or property damage occurs through professional negligence, which replaced throughout all Australian jurisdictions the established legal principle of joint and several liability. This decision will impact on the ability of victims of professional negligence to achieve full compensation in certain instances and may impact on the risks for business in dealing with service providers; and

The endorsement by the Standing Committee of Attorneys-General of model provisions which are to form the basis for consistent laws for the regulation of Australia's legal profession.

The RISs for the first four of these decisions were compliant with COAG's requirements (one of these had qualified compliance), and contained a level of analysis commensurate with the significance and impact of the proposal. For the last three decisions, the COAG *Principles and Guidelines* were not complied with either at the consultation stage or at the decision-making stage.

In summary, the compliance result for the seven matters of 'greater significance' for the year to 31 March 2004 is 57 per cent. While comparisons from year to year are only indicative given the small number of significant matters in each reporting period, the ORR notes that compliance for the current period is less than that for the ORR's second and third reports to the NCC.

Table A.4 summarises compliance results for all proposals and significant proposals over the periods covered by the four ORR reports to the NCC.

Table A.4: COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2000-01 to 2003-04[1]

	2000-01	2001-02	2002-03	2003-04
Overall compliance (qualified and full)	15/21 (71%)	23/24 (96%)	24/27 (89%)	30/34 (88%)
Compliance (qualified and full) for significant regulatory proposals	5/9 (56%)	6/6 (100%)	4/6 (67%)	4/7 (57%)

Source: ORR estimates

[1] Data for 2000-01 relate to the period 1 July 2000 - 31 May 2001. Data for 2001-02 relate to the period 1 April 2001- 31 March 2002. While there is therefore some overlap between these two reports, only four decisions (including one on a significant matter) are covered by both reports. All decisions covered in both reports were compliant with COAG's requirements.

7 Compliance issues

The lack of full compliance with COAG's RIS requirements, particularly for the more significant regulatory proposals, continues to be an issue.

Non-compliance appears to be due to several factors. The first is that there has not been a good appreciation by some Ministerial Councils and national standard-setting bodies of the analytical requirements of a COAG RIS. This includes adequate identification of the problem and potential case for government regulation, and a balanced and thorough assessment of feasible options.

It would also appear that, as for the third report, the allocation of decision-making power to ad hoc groups or committees involves a risk that these processes may not follow best practice, in large part because such groups are not fully aware of COAG's requirements.

These factors played a role in the first two non-compliant decisions listed in Table 5.1. It should be noted, however, that each of the relevant decision-making bodies made one other decision during the same period that did meet COAG's RIS requirements. This suggests that these factors, while responsible for poor compliance outcomes for some decisions, may not be systemic with respect to these bodies.

In relation to the third non-compliant decision listed in Table 5.1, the key factor facilitating non-compliance was the decision being made in several stages. In this case, the initial decision to regulate was not subjected to the COAG RIS process. Operational and implementation issues are to be considered in the second and subsequent stages.

The fourth non-compliant decision noted above was made by a Ministerial Council that, with respect to all other reports by the ORR to the NCC, has been fully compliant with COAG's requirements. Further, the secretariat had consulted early with the ORR on other regulatory proposals being developed during the current reporting period.

Taking a longer term view of compliance over the period covered by the four reports by the ORR, it would appear that, with some exceptions, non-compliance is usually associated with decision-making bodies that make infrequent regulatory decisions, and for which the regulatory best practice approach required by COAG has not become incorporated into their operating protocols. The majority of these decisions have been on regulatory matters of significance.

The lack of compliance at the community consultation stage is also an issue. While it is due in part to a continued lack of awareness of COAG's RIS requirements, it would also appear to be due to a lack of awareness of COAG's specific requirement for a consultation RIS.

8 Improving compliance

There is clearly a need for improved awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR.

In the twelve months to 31 March 2004, the ORR provided training on COAG's RIS requirements to over 90 government officials. Further training will continue, with particular emphasis on officials supporting decision-making groups that make regulatory decisions less often, but potentially on significant issues.

There is also a need for a better understanding of COAG's RIS requirements at the consultation stage. The ORR aims to address this in briefing and training officials. It is also intended that, for the fifth report to the NCC, covering the period 1 April 2004 – 31 March 2005, the ORR will continue to report (as here) on compliance at the consultation stage for individual decisions made during the reporting period. This increased transparency may assist in raising compliance with COAG's RIS requirements.

It is also worthy of note that, while COAG does not require that the final RIS for the decision-making stage be made public, a number of standard-setting bodies and secretariats of Ministerial Councils have made public the final RIS for decisions made during the reporting period. They include the Australian Building Codes Board, the National Occupational Health and Safety Commission, and the secretariat for the Gene Technology Ministerial Council. This practice further promotes the transparency of the policy development process, and as such is consistent with regulatory best practice.

Appendix B National Competition Policy contacts

For further information about National Competition Policy, please contact the National Competition Council or the relevant Commonwealth, State or Territory competition policy unit.

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Australian Capital Territory

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Northern Territory

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