

12 Other transport services

Earlier chapters relating to transport have discussed specific NCP issues for road, rail and urban transport. The extensive involvement of governments, either through ownership or regulation, means there is a potential for all NCP obligations to be relevant to the transport sector. This chapter examines NCP issues relating to ports, shipping and marine transport, and airports.

The sea and air transport industries are generally characterised by a mix of government and private ownership, with governments regulating aspects of both industries. In the case of air transport, airports are both government and privately owned, with some only recently privatised. Private operators own the airlines. Similarly, ports are both government and privately owned, with most shipping carriers run by private operators. Internationally, competition in shipping is usually regulated. As a result governments need to review legislation in various areas of the shipping industry to ensure it does not restrict competition unless the benefits of the restriction outweigh the costs and the objectives of the legislation can be achieved only through such restrictions.

Because government ports and airports are significant business activities, governments need to apply the principles of competitive neutrality. Many of these organisations will need to adopt a corporatisation model, imposing taxes, debt guarantee fees and equivalent private-sector regulation to ensure that prices charged reflect full cost attribution.

Finally, given recent moves to privatise air and sea transport businesses, or to introduce competition where these businesses were public monopolies, owner governments need to review the structure of these organisations. Governments must also ensure that any responsibilities for industry regulation are removed and relocated, so as to prevent the former monopolist enjoying a regulatory advantage over existing and potential rivals.

Ports and sea freight

Australia, as an island nation, must have a competitive and well-organised shipping industry because it depends on shipping services to import goods from other nations and to export Australian-made products. The sea freight services include liner shipping services and bulk shipping services. Liner shipping mainly transports non-bulk cargo, usually in shipping containers. Bulk shipping usually involves the transport of a single product such as grain.

Legislative restrictions on competition

Ports, marine and shipping activity has been subjected to government regulation for many years. Many governments developed statutes in the early 1900s as shipping was (and still is) a major aspect of trade and legislation was produced to regulate, manage, set prices, and safety standards for trade through shipping channels and port infrastructure. Regulations that restrict competition include:

- access to shipping berths, channels and port infrastructure,
- pilotage requirements,
- marine safety and navigation;
- vessel operating requirements including crewing;
- organisations governing ports and shipping having the power to set prices and regulations as well as market products;
- organisations governing ports and shipping being exempt from paying taxes and government charges; and
- provisions to issue various licences for vessels and vessel operations.

Regulating in the public interest

The Council focussed on the tests in clause 5 of the Competition Principles Agreement (CPA) in determining the progress of jurisdictions for legislative reform. These tests included whether any retained restrictions provide a net community benefit and whether they are the only way of achieving the government's objectives. Jurisdictions provide progress on its review timetable of shipping and port legislation and in most cases included an assessment of the above tests.

Review and reform activity

Table 12.1 summarises government's review and reform activities relating to the regulation of ports, shipping and marine matters.

Table 12.1: Review and reform of legislation regulating port, marine and shipping activity

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth	Part X of the <i>Trades Practices Act 1974</i>	Provision for shipping companies to be exempt from competition law and form conferences	Completed in 1999 by the Productivity Commission.	<i>Trades Practices Amendment (International Liner Cargo Shipping) Act 2000</i> enacted on 5 October 2000 picks up, with some minor changes, all the recommendations made by the Productivity Commission.	Meets CPA obligations (June 2001).
	<i>Maritime Legislation Amendment Act 2001</i>		Completed in 2000.	New legislation.	Council to assess progress in 2002.
	<i>Navigation Amendment (Employer of Seafarers) Act 2001</i>		Completed in 1998.	New legislation.	Council to assess progress in 2002.
	<i>Protection of the Sea (Civil Liability) Act 2001</i>		Completed in 2000.	New legislation.	Council to assess progress in 2002.
	Coastal Trade Part VI Provisions of the <i>Navigation Act 1912</i>		Completed in 2000. Final report provided to Minister.	Minister for Transport & Regional Services and the Minister for Financial Services have agreed to develop a whole of government response during 2000-01.	Council to assess progress in 2002.
	<i>Australian Maritime Safety Authority Act 1990</i>	Provisions for safety can only be undertaken by Government	Completed in 1997.	Reforms implemented.	Meets CPA obligations (June 2001).
	<i>Navigation Act 1912</i>	Provisions for ship safety and environmental protection	Completed in 2000.	Proposed Bill to be debated in the near future.	Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Commonwealth (continued)	<i>Navigation Act 1912</i>	Provisions for the employment of seafarers	Completed in 1998.	Proposed Bill debated and returned for further action.	Council to assess progress in 2002.
	<i>Shipping Registration Act 1912</i>	Provision for registration of ships	Completed in 1997.	Government accepted all of the recommendations and is progressing implementing legislative amendments.	Council to assess progress in 2002.
New South Wales	<i>Marine Safety Act 1998</i>	Provision for vessel operations, licensing and navigation	NCP review to be undertaken following the gazette of the Regulations.		Council to assess progress in 2002.
	<i>Ports Corporation and Waterways Management Act 1995</i>	Provision for marine administration, safety, port charges and pilotage	Statutory review completed. NCP review is being progressed as a matter of urgency.		Council to assess progress in 2002.
	<i>Commercial Vessels Act 1979</i>	Provision for the use of certain vessels	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	<i>Maritime Services Act 1935</i>	Provision for harbour operations	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	<i>Marine Pilotage Licensing Act 1971</i>	Provisions for pilotage	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
	<i>Navigation Act 1901</i>	Restrictions on market conduct and entry	Completed.	Repealed and replaced	Meets CPA obligations (June 2001).

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales (continued)	<i>Marine (Boating Safety-Alcohol and Drugs) Act 1991</i>	Provisions for using vessels under certain conditions	Completed.	Repealed and replaced.	Meets CPA obligations (June 2001).
Victoria	<i>Marine Act 1988</i>	Provision for pilotage, licensing of pilots and harbour masters, and vessel registration.	Completed in 1998. Review recommended the retention of vessel registration, amendments to licensing standards and discontinuation of monopoly pilotage agreement.	Recommendations accepted and implemented.	Meets CPA obligations (June 2001).
	<i>Transport Act 1983</i> (Passenger Ferry Services)	Provisions for ferry operation	Review completed.	Repealed.	Meets CPA obligations (June 2001).
Queensland	Harbours (Reclamation of Land) Regulation 1979	Provisions for approval procedures for activities in tidal waters (for example, land reclamation and harbour works)	Completed.	To be repealed with certain approval provisions to be incorporated in other existing legislation.	Council to assess progress in 2002.
	Transport Infrastructure (Ports) Regulation 1994 under the <i>Transport Infrastructure Act 1994</i>	Provisions for harbour towage restrictions	Review underway and to be completed by mid 2001.		Council to assess progress in 2002.
	Transport Infrastructure (Ports) Regulation 1994 under the <i>Transport Infrastructure Act 1994</i>	Provisions for port activities outside of port limits	Review to be considered by Cabinet.		Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Transport Operations (Marine Safety) Act 1994</i> Transport Operations (Marine Safety) Regulation 1994	Provisions for marine safety, pilotage services	Completed.	Proposed legislative amendments are currently being implemented.	Council to assess progress in 2002.
	<i>State Transport (Peoples Movers) Act 1989</i>	Provisions for licences and operational requirements for vehicles	Completed.	To be repealed and any restrictive provisions sought to be retained in legislation to undergo a public benefit test.	Council to assess progress in 2002.
	Transport Legislation Amendment Bill 2001	Provision for safety and operations	Reformed without review.	New legislation.	Council to assess progress in 2002.
	<i>Sea Carriage of Goods (State) Act 1930</i>	Provisions for operating requirements for the carriage of sea goods	Completed.	To be repealed.	Council to assess progress in 2002.
Western Australia	<i>Port Authorities Act 1998</i>	Provisions for pilotage, licensing, planning and borrowing.	Completed in 1997. Review recommended the retention of licensing, pilotage, exemption from planning and building requirements and borrowing limits in the public interest.	No reform planned.	Meets CPA obligations (June 2001).
	<i>Jetties Act 1926</i> and Regulations	Provisions for access restrictions	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>Lights (Navigation Protection) Act 1938</i>	Restricts access and market conduct	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	<i>Marine and Harbours Act 1981</i> and Regulations	Provisions for harbour operations	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	Ports (Model Pilotage) Regulations 1994		Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Ports Function Act 1993</i>	Restrictions market conduct	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Shipping and Pilotage Act 1967</i> and Regulations	Provisions for pilotage services	Completed in 1999.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	<i>Albany Port Authority Act 1926</i> and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Bunbury Port Authority Act 1909</i> and Regulations	Restrictions market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Dampier Port Authority Act 1985</i> and Regulations	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>Fremantle Port Authority Act 1902 and Regulations</i>	Restrictions on market conduct and market entry.	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Geraldton Port Authority Act 1968 and Regulations</i>	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Marine Act 1982</i>	Provisions for harbour operations	Completed in 2000.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	<i>Maritime Services Bill</i>	Provisions for safety and harbour operations	Completed in 2001.	Bill awaiting Parliamentary approval.	Council to assess progress in 2002.
	<i>Port Hedland Port Authority Act 1970 and Regulations</i>	Restrictions on market conduct and market entry	Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Port Kennedy Development Agreement Act 1992</i>	Restrictions on market conduct and market entry	Completed.		Council to assess progress in 2002.
	<i>Marine Navigational Aids Act 1973</i>	Provisions for marine navigation aids	Completed.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.
	<i>Pilots Limitation of Liability Act 1962</i>	Provisions limiting liability	Completed.	To be repealed by the Maritime Bill.	Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia (continued)	<i>Esperance Port Authority Act 1968</i>	Restrictions on market conduct and market entry	Review completed.	Repealed.	Meets CPA obligations (June 2001).
South Australia	<i>Maritime Services (Access) Act 2000</i>	Port Access Regime, regulates prices	Reformed without review, third party access regime.		Council to assess progress in 2002.
	<i>South Australia Ports Corporation Act 1994</i>	Restrictions on market conduct and market entry	Review postponed pending outcome of the process to sell or lease the South Australia Ports Corporation.	Act to be repealed following the divestment of the ports assets is completed.	Council to assess progress in 2002.
	<i>South Australia Ports (Disposal of Maritime Assets) Act 2001</i>	Provisions for disposal of port assets	Reformed without review.	New legislation.	Council to assess progress in 2002.
	<i>Harbors and Navigation (Control of Harbors) Amendment Act 2001</i>	Provision for marine safety, licensing and pilotage	Reformed without review.	New legislation.	Council to assess progress in 2002.
	<i>Harbours and Navigation Act 1993</i>	Provisions for harbour operations	Completed in 1999.	Inter-governmental Agreement for national moves to develop consistent legislation.	Council to assess progress in 2002.
Tasmania	<i>Marine Act 1976</i>	Restrictions on market conduct and market entry	Completed.	Act amended in 1998 to remove restrictions.	Meets CPA obligations (June 2001).
	<i>Marine and Safety Authority Act 1997</i>	Provision for marine safety	Reformed without review.	New legislation.	Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Tasmania (continued)	<i>Port Companies Act 1997</i>	Established port authorities	Reformed without review.	New legislation.	Council to assess progress in 2002.
	<i>Marine (Consequential Amendments) Act 1997</i>	Provisions for amendments to marine operations	Reformed without review.	New legislation.	Council to assess progress in 2002.
	<i>Roads and Jetties Act 1935</i>	Provisions for access restrictions	Minor review conducted and recommended retention of access restrictions in the public interest.	Recommendations accepted.	Meets CPA obligations (June 2001).
	<i>Marine Farming Planning Act 1995</i>	Provisions for marine farming applies fees and charges and approves plans	Review found that retention of fees, approval of plans(s) to be in the public interest.		Council to assess progress in 2002.
	<i>Hobart Bridge Act 1958</i>		Completed.	Repealed.	Meets CPA obligations (June 2001).
	<i>Port Huon Wharf Act 1955</i>	Provisions for access restrictions	Completed.	Repealed.	Meets CPA obligations (June 2001).
Northern Territory	Port Bylaws 53A	Provisions for licensing of stevedores	Review found fees and licensing restrictions to be in the public interest	Recommendations accepted.	Meets CPA obligations (June 2001).
	Harbour Craft By-laws part 6	Provisions for vessel operating requirements	Review recommended the Act be repealed	Recommendations accepted.	Council to assess progress in 2002.

(continued)

Table 12.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory (continued)	<i>Darwin Port Corporation Act</i>	Provisions for pilotage, licensing and stevedoring	Reviewed in 2001. Fees and licensing restrictions found to be in the public interest.	Recommendations accepted. Partial exemption from Corporations Law reform to be implemented by June 2002.	Meets CPA obligations (June 2001).
	<i>Darwin Port Authority Act</i> and Bylaws			Title changed to Darwin Port Corporation Act in 1999 (see above).	Meets CPA obligations (June 2001).
	<i>Marine Act and Regulations</i>	Provisions for harbour operations and hire drive vessels	Completed in 2001. Review found that restrictions in the Act are in the public interest.		Meets CPA obligations (June 2001).

Competitive neutrality: sea freight, ports and storage

Most government-regulated functions relating to ports and shipping were developed and set by statutes in the early to mid-1990s. Then, governments often insulated their businesses from many of the pressures facing private sector firms; for example, many government-based institutions were given tax-free status even though they may have marketed and sold products and/or services.

Clause 3 of the CPA requires governments to apply competitive neutrality principles to significant government businesses. These principles require, at a minimum, significant businesses to set prices that at least cover costs. Where a government-owned port is classified as a 'public trading enterprise', clause 3 calls for the jurisdiction to adopt a corporatisation model to provide the port with a commercial focus and independence from government for day-to-day decisions.

Commonwealth

The main commercial businesses of the Australian National Line were sold in 1998-99, with the exception of vessel leases involving four ships chartered to, and operated by, other companies. This part of the former Australian National Line remains a wholly Commonwealth owned share-limited company (known as the Australian River Company Limited). The Commonwealth does not apply competitive neutrality requirements to this company. The Commonwealth advised that, because the responsibilities of the company are purely financial and it is a wholly owned Commonwealth share-limited company, it has developed a joint shareholder arrangement with responsibilities shared between the Minister for Transport and Regional Services and the Minister for Finance and Administration. As a result competitive neutrality principles were not applied during 1999-2000 and the remaining business was not seen as being significant.

New South Wales

In New South Wales, the *State Owned Corporations Act 1989* and the *State Owned Corporations Amendment Act 1995* provide a framework for corporatising government business enterprises as proxy public companies called state owned corporations. The following port or shipping authorities are subject to the above Acts:

- the Darling Harbour Authority;
- the Newcastle Port Authority;

- the Port Kembla Port Authority; and
- the Sydney Ports Corporation.¹

The New South Wales Government corporatised the Newcastle Port Corporation, the Port Kembla Port Corporation and the Sydney Ports Corporation on 1 July 1995. These government business enterprises must report to, and are monitored by, the New South Wales Treasury on a quarterly basis. The Darling Harbour Authority is to be absorbed into the Sydney Harbour Foreshore Authority in 2001.

The Government subjects all significant New South Wales Government businesses to its commercial policy framework. Under the New South Wales Government framework, each authority is required to reflect the environment faced by a private sector firm in a competitive market by providing for the application of:

- commercially based targets, dividends and capital structures;
- regular performance monitoring;
- State taxes and Commonwealth tax equivalents;
- risk-related borrowing fees;
- explicit funded social programs or community service obligations; and
- regulation equivalent to that faced by private sector companies.

Victoria

The *Port Services Act 1995* provides for the establishment of the following port corporations:

- the Hastings Port (Holding) Corporation;
- the Melbourne Port Corporation; and
- the Victorian Channels Authority.

The Act provides for access regulation, the separation of regulatory and commercial functions, and the integration of commercial ports into the broader regulatory environment. The Victorian Government is currently undertaking an independent review of its port reforms, aimed at improving the effectiveness and efficiency of ports. A report detailing review recommendations will be presented to the Minister for Ports for

¹ The Marine Ministerial Holding Corporation was abolished on 1 July 2000.

consideration, in consultation with the Treasurer and Minister for Finance, by end of 2001.

The Melbourne Port Corporation and the Victorian Channels Authority are subject to all State and Commonwealth taxes and comply with the Victorian income tax equivalent system. They are also subject to all local government charges and to the State Government's Financial Accommodation Levy, which offsets the competitive advantage associated with government guarantees. Further, they are subject to all relevant State and Commonwealth regulations. The Melbourne Port Corporation does not provide community service obligations unless directed by the Victorian Treasurer (in accordance with the Port Services Act). The Victorian Channels Authority does not provide community service obligations.

The Hastings Port (Holding) Corporation is a statutory body that holds the freehold titles and head leases to the land and seabed that make up the commercial port of Hastings. It administers the port management agreement with a private operator and has no regulatory powers to provide community service obligations. Unlike the Melbourne Port Corporation and the Victorian Channels Authority, it is not liable for State or Commonwealth taxes or for local government fees or charges.

The Victorian Government advised the Council that it has not required the Hastings Port Corporation to apply tax equivalents because the primary business of the corporation is to manage the port, not to trade in goods and services directly with end users. The Government also advised that the corporation is not a significant operation (with annual revenue of less than \$1 million) and the application of competitive neutrality arrangements would deliver no net benefit. Hastings Port has been contracted out to a private contractor since 1997. The private port operator derives its revenue from user charges and is subject to income tax.

Queensland

Queensland has 14 trading ports, two community ports and five non-trading ports, which are administered by eight port authorities. The port authorities are responsible for providing and maintaining channels and berths, while contracting others to provide services such as towage and stevedoring. Only Gladstone Port Authority undertakes stevedoring activities. Port navigation and pilotage functions are the responsibility of the Regional Harbour Master of Queensland Transport. The Queensland Government implemented competitive neutrality principles through the corporatisation of its port authorities in 1994.

Western Australia

The Western Australian Government controls essential marine transport infrastructure through its ownership of regional and metropolitan port

authorities. The Government stated that it is committed to ensuring a competitive and efficient ports system. Under the NCP review and reform process the Western Australian Government repealed the local port authority Acts and replaced them with the less restrictive *Port Authorities Act 1998*.

Also as part of the reform process, Western Australia commercialised its port authorities, making them subject to all State taxes and local government rates (or equivalents). However, it is not clear whether Western Australia's port authorities are subject to Commonwealth taxes or tax equivalents. It is also not clear whether Western Australia is applying competitive neutrality arrangements to the Port Kennedy Management Board (established under the *Port Kennedy Development Act 1992*) or proposes to do so. The Council will seek information from Western Australia on this in the context of the 2002 assessment.

South Australia

The SA Ports Corporation managed and owned 10 ports in South Australia. The South Australian Government recognised that the SA Port Corporation was a significant Government entity with business and regulatory interests and powers. It corporatised the port entity with a view to improving its performance. Subsequently the Government has taken an in-principle decision to sell its ports.

The *Maritime Services (Access) Act 2001* provides for the regulation of prices of certain essential maritime services provided by a private port operator. Under this Act, the Minister will issue an initial pricing determination that will establish a price cap for three years. Following this initial three-year period, the South Australian Independent Industry Regulator will conduct a general review of port services and prices, and will establish ongoing pricing regulation.

Tasmania

Tasmania corporatised its port authorities, with a view to improving their commercial performance, in July 1997. The mechanism for corporatisation was the *Port Companies Act 1997*, which established four wholly State-owned companies and two subsidiary companies under the Corporations Law. These new companies commenced on 30 July 1997.

Also, from the 30 July 1997 the Government Business Act's tax-equivalent and debt guarantee fee regimes replaced the partial competitive neutrality regimes that had previously applied to the port authorities. The port companies are also expected to make dividend payments to the Government as shareholder, in accordance with the Corporations Law.

Northern Territory

The Northern Territory Government implemented competitive neutrality principles mainly through commercialising all significant Government business operations (Government Business Divisions).

The Darwin Port Authority was established as a Government Business Division in 1995. The authority's title was changed to the Darwin Port Corporation in 1995 after the implementation of further competitive neutrality reforms, the adoption of a commercial charter and the appointment of a commercial board of directors.

Assessment

Governments have mostly completed the process of establishing their port authorities as government-owned corporations subject to competitive neutrality principles. No government competitive neutrality complaints mechanism received complaints about port authorities, suggesting that the operation of port authorities is generally consistent with CPA clause 3.

Victoria's Hastings Port (Holding) Corporation is not liable for State or Commonwealth taxes or for local government fees or charges. The Council accepts Victoria's explanation that the corporation's primary business is not trading goods and services directly and that the small size of the business means there is no net benefit in applying tax equivalents.

The Council is unable to determine, from the information so far available, whether the Western Australian port authorities are subject to all Commonwealth taxes. Further, the Council does not have information to determine whether there are grounds for applying competitive neutrality principles to Western Australia's Port Kennedy Management Board.

The Council will consider these matters further in the NCP assessment in 2002.

Structural reform of port authorities

Over recent years, several jurisdictions have privatised or considered privatising their port authorities. Some have also looked at introducing access regimes that cover various port services. Where port services previously operated as government monopolies, these reforms raise obligations under clause 4 of the CPA.

Where a State or Territory has decided to privatise a port authority or to increase competition in port services traditionally supplied by a public monopoly, the owner government must have removed and relocated any responsibilities for industry regulation. This is to prevent the former

monopolist from enjoying a regulatory advantage over its existing and potential rivals. In addition, the structure of the former monopoly should be reviewed, taking into account:

- appropriate commercial objectives;
- the merits of separating the natural monopoly elements from the competitive elements;
- the most effective means of separating regulatory functions from competitive functions;
- the most effective means of implementing competitive neutrality principles;
- the merits and best means of funding any community service obligations;
- price and service regulations; and
- the financial relationship between the owner and the monopoly, including the rate of return, dividends and capital structure.

In many cases, port authorities have been operating as public monopolies either because regulatory restrictions have prevented or controlled competition or because the facilities have natural monopoly characteristics.² Often, governments have recognised that these are monopoly services; for example, some States have developed access regimes to regulate various port services, and such regimes are designed to increase competition in markets supplied by natural monopoly infrastructure. In this assessment, the Council considered whether NCP structural reform commitments have been fully addressed by jurisdictions that have privatised port authorities or introduced competition through access arrangements for port services.

New South Wales

As discussed above in relation to competitive neutrality, there are four New South Wales ports bodies corporatised in accordance with the State Owned Corporations Act and the State Owned Corporations Amendment Act:

- the Darling Harbour Authority;
- the Newcastle Port Authority;
- the Port Kembla Port Authority; and

² A natural monopoly exists where it is more cost-effective for only one facility to provide the service, rather than two or more competing facilities.

- the Sydney Ports Corporation.

Victoria

The Port Services Act sets up various port corporations in Victoria. The Act also established the Victorian Channels Authority and a regime for third-party access to Victorian shipping channels. Victoria's access regime has been certified as effective. The Victorian Government has removed all regulatory functions from the port corporations.

Queensland

Queensland corporatised its port authorities in 1994, introducing port corporatisation charters for all of its ports. The charters addressed the following matters:

- strategic direction and related investment planning;
- core and non core activities;
- performance monitoring;
- asset valuation;
- capital structure;
- dividends and rate of return;
- community service obligations;
- pricing and taxation;
- the form of the legal entity; and
- regulatory powers.

Western Australia

Western Australia repealed the local port authority Acts and replaced them with the less restrictive *Port Authorities Act 1998*. As part of the reform process, Western Australia commercialised its port authorities, making them subject to State taxes and local government rates (or equivalents).

South Australia

South Australia reviewed the structure of its ports before taking an in-principle decision in March 1999 to lease/sell the SA Ports Corporation. South Australia advised that it enacted legislation for the lease/sale of the SA Ports Corporation in December 2000.

As part of the lease/sale, the South Australian Government is intending to introduce a legislated third-party access scheme covering maritime services. South Australia intends that maritime services be defined to include access to channels, defined common user berths, berths adjacent to grain handling facilities and grain handling facilities (belts). South Australia stated that its intention is to seek certification, in accordance with clause 6(3) of the CPA, of the State-based access regime contained in the legislation for the lease/sale of the SA Ports Corporation.

The Maritime Services (Access) Act provides for the regulation of prices of certain essential maritime services provided by the (future) private port operator. Under the terms of the pricing regulation, the Minister (currently the Minister for Government Enterprises) will issue an initial pricing determination that will establish a price cap for three years. After the initial period the South Australian Independent Industry Regulator will conduct a general review of port services and prices, and will establish the ongoing pricing regulation.

Tasmania

Tasmania's Port Companies Act establishes four wholly State-owned companies and two subsidiary companies under the Corporations Law.

The Government established the Marine and Safety Authority of Tasmania on 30 July 1997. In addition to performing the regulatory and non-commercial functions of the former Navigation and Survey Authority of Tasmania, the Marine and Safety Authority is responsible for the safe operation of vessels within Tasmanian waters.

Northern Territory

The former Darwin Port Authority was established as the Darwin Port Corporation in 1999.

Assessment

The Council considers that New South Wales, Victoria, Queensland, Tasmania and the Northern Territory have complied with structural reform commitments under CPA clause 4. While Western Australia has

commercialised its port authorities, the Council needs further detail of its reforms to determine whether the State has fully met its obligations under clause 4.

South Australia's decision to seek certification of a third-party access regime for ports and its decision to lease/sell the SA Ports Corporation raise structural review obligations under the NCP. South Australia has informed the Council that it has conducted a structural review consistent with CPA clause 4. The Council has sought further information from South Australia to assess whether clause 4 commitments have been addressed.

The Council will consider progress by Western Australia and South Australia in the 2002 NCP assessment.

Airports

Sydney Basin airports (Commonwealth)

In the first tranche NCP assessment (June 1997), the Council raised the matter of the Commonwealth's failure to conduct a clause 4 review before the sale of the long-term leases operated by the Federal Airports Corporation (FAC). At the time the Council recognised that arrangements already in place or being contemplated by the Commonwealth might encompass many questions of structure that would be addressed in a clause 4 review of the FAC.

In September 1998 the Commonwealth abolished the FAC and leased its remaining airport holdings to newly created Commonwealth-owned companies. The Sydney Airports Corporation Limited (SACL) is a Commonwealth owned Corporations Law company established to operate the Sydney Basin Airports (Sydney (Kingsford Smith) Airport, Bankstown Airport, Camden Airport and Hoxton Park Airport), under lease from the Commonwealth. Essendon Airport was formed as a subsidiary company of SACL.

The SACL applies full competitive neutrality principles, with the company subject to the same taxes as other airports and subject to a rate of return target. There is a single shareholder arrangement to separate the Government's role as shareholder and regulator. The Minister for Finance and Administration is responsible for shareholder issues, and the Minister for Transport and Regional Services for regulatory issues.

The Commonwealth regulates the SACL airports under the *Airports Act 1996*. This Act removes from the lessees responsibility for the regulation of land use and environmental planning and control, commercial and retail trading, and

liquor licensing. Lessees' on-airport activities, including commercial and retail trading and liquor licensing, are subject to State regulations.

The Commonwealth has implemented arrangements aimed at encouraging competition between airports. The Airports Act prohibits airlines from owning more than 5 per cent of an airport operator company and imposes cross-ownership restrictions of 15 per cent for the Sydney (Kingsford Smith) Airport and the Melbourne, Brisbane and Perth airports. There will also be cross-ownership restrictions to ensure that the same party cannot control the Sydney Airport and the Bankstown, Camden and Hoxton Park airports. The *Airports Act* also contains provisions (s192) to ensure that businesses are able to obtain access to airport infrastructure to provide civil aviation services in line with part IIIA of the *Trade Practices Act 1974* (TPA). While the SACL airports are not currently subject to s192, they are subject to part IIIA of the TPA.

In addition, the Commonwealth has established an economic regulatory regime, administered by the Australian Competition and Consumer Commission (ACCC), to protect users against potential abuse of monopoly power by airport lessees. The prices oversight regime provides for a CPI-X price cap on a defined set of aeronautical services at core regulated (major) airports for five years.³ There is also price monitoring of aeronautical-related services outside the price cap where operators could exert significant market power at individual airports.

In December 2000 the Commonwealth Government announced that Sydney (Kingsford Smith) Airport will be able to handle the air passenger demand over the next ten years and therefore it would be premature to build a second major airport in the city. The Government announced that Bankstown Airport is to be made available as an overflow airport for Sydney. Further, the Commonwealth announced that it would break up the SACL and privatise it as two separate and competing companies, with one company operating Kingsford Smith Airport and the other operating Bankstown, Camden and Hoxton Park airports. The Government aims to complete the sale of the company that operates Kingsford Smith Airport in the second half of 2001.⁴

On 29 March 2001 the Commonwealth Government announced that Kingsford Smith Airport would be sold by way of a 100 per cent trade sale to be completed in the second half of 2001. Further, the new owner will be given the first right of refusal by the Commonwealth to build and operate any second major airport within 100 kilometres of the Sydney CBD. The other Sydney Basin airports (Bankstown, Camden and Hoxton Park) will also be

³ The ACCC is responsible for determining the 'X' values, which range from 1.0 to 5.5.

⁴ The Commonwealth announced in October 2000 that it would sell Essendon Airport Limited, with the sale expected to be completed in August 2001.

sold through a 100 per cent trade sale, to be completed in the second half of 2002.

The matter to be considered through a review under CPA clause 4 is the appropriate structure of the Sydney Basin airports (including any second airport) before privatisation. The Commonwealth has given an undertaking that its future processes will consider structure and competition issues for Kingsford Smith and any second international airport. The Commonwealth Department of Finance and Administration is in the process of preparing a CPA clause 4 review of the SACL. It is expected that this review will be finalised by the end of August 2001.

Airservices Australia

Airservices Australia is a monopoly provider of air navigation, rescue and fire fighting services in the aviation industry. In 1997, the Commonwealth initiated a review of the scope for introducing contestability and reducing the residual regulatory functions of what is by-and-large a commercial entity, albeit with a function of ensuring the safe and efficient use of Australian airspace. The review reported in early 1998 and has been considered by Government, but has not been published.

Competitive neutrality in the provision of services to airport operators by air traffic control providers, both Airservices Australia and other parties, was addressed in the review. Competitive neutrality arrangements have not been implemented for Airservices Australia because it is currently a legislated monopoly. However, the Civil Aviation Safety Authority is in the process of developing a safety regulatory framework for the provision of air traffic control services and aerodrome rescue and fire fighting services. Once this framework is in place and the necessary legislative amendments have been made, there will be scope for competition from alternative service providers. En-route services are and will remain an Airservices Australia monopoly for technical reasons.

Assessment

Noting that the Commonwealth expects to finalise its CPA clause 4 structural review of the SACL in August 2001, the Council will assess whether the Commonwealth has met its clause 4 obligations in respect of the Sydney Basin airports in the 2002 NCP assessment. The Council considers that the Commonwealth has met its CPA clause 3 competitive neutrality obligations.