NATIONAL
COMPETITION
COUNCIL

Assessment of governments' progress in implementing the National Competition Policy and related reforms: 2005

October 2005

ISBN 0-9757067-6-4

Inquiries or comments on this report should be directed to:

Media and Communications Manager
National Competition Council
Level 9
128 Exhibition Street
MELBOURNE VIC 3000

Ph: (03) 9285 7474
Fax: (03) 9285 7477
Email: info@ncc.gov.au

An appropriate citation for this paper is:

National Competition Council 2005, *Assessment of governments' progress in implementing the National Competition Policy and related reforms*, Melbourne.

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.

Table of contents

Appendices

Boxes

Figures

Tables

Overview and recommendations

This 2005 assessment of governments' progress implementing the National Competition Policy (NCP) and related reforms is the final assessment under the suite of the NCP reforms adopted by all Australian governments in 1995. Over the past decade, Australian governments have participated in the most extensive and successful economic reform program in the nation's history.

With the near conclusion of the NCP, the Australian Government requested the Productivity Commission, in April 2004, to inquire into the impacts of the NCP and report on future areas 'offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition' (PC 2005a, pp. iv–v).

The Productivity Commission provided its final report in February 2005. It found that:

> *National Competition Policy (NCP) has delivered substantial benefits to the Australian community which, overall, have greatly outweighed the costs. It has:*
>
> - *contributed to the productivity surge that has underpinned 13 years of continuous economic growth, and associated strong growth in household incomes*
> - *directly reduced the prices of goods and services such as electricity and milk*
> - *stimulated business innovation, customer responsiveness and choice*
> - *helped meet some environmental goals, including the more efficient use of water.*
>
> *… Though Australia's economic performance has improved, there is both the scope and the need to do better. Population ageing and other challenges will constrain our capacity to improve living standards in the future. Further reform on a broad front is needed to secure a more productive and sustainable Australia.* (PC 2005a, p. xii)

The Council of Australian Governments (COAG) in June 2005 endorsed the need to maintain reform momentum and to lock in the substantial benefits achieved. It stated that:

> *It is important not to be complacent about the continued performance of the Australian economy. Resting on the achievements of the last*

> *decade will cost the Australian community opportunities for greater prosperity.*
>
> *Australia's productivity performance is under threat, with further reform essential if the economic expansion of the last 14 years is to continue.*
>
> *The Australian economy is operating in an intensely competitive international environment. As a small trading nation, Australia will drive its economic growth by minimising barriers to trade and maximising its business flexibility.*
>
> *The case for continuing reforms on a collaborative basis is clear.* (COAG 2005, p. 5)

COAG agreed to review the NCP by the end of 2005, drawing from, but not being limited by, the Productivity Commission report. The outcome of the COAG process will be a new reform agenda and accompanying institutional arrangements, including whether independent assessment of governments' progress should continue.

This 2005 NCP assessment concludes recommendations on the financial incentive payments to the states and territories, contingent on them implementing agreed reforms. Maximum competition payments for 2005-06 are estimated at $800 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 commitments. State and territory governments are not compelled to implement the NCP reforms, but the Council may recommend a reduction or suspension of competition payments if it assesses that governments have not met their agreed commitments.

The 2003 NCP assessment was the first time the Council recommended substantial payment reductions for all state and territory governments, reflecting the commitment to have completed the legislation review and reform program—a significant element of the NCP package—by 30 June 2002. The Council also recommended payments reductions in the 2004 NCP assessment. The Australian Government accepted all recommendations arising from both assessments. The scope and magnitude of the reductions reflected that the NCP was drawing to a close so governments needed to meet all commitments, particularly given the billions of dollars in competition payments already dispensed.

The National Competition Policy 1995–2005: a snapshot of outcomes

The NCP reforms are based on a pro-competitive presumption, but with competition as a means rather than an end in itself. Foremost, the NCP aims to promote the public interest. Its reform elements, therefore, are subject to safeguards to weigh the costs and benefits on a case basis. The NCP provides for consideration of efficiency, social, environmental, equity and regional objectives in the assessment of reform options.

The 1995 intergovernmental agreements for the NCP set out the following commitments.

Competition Code

Commitment: Enact legislation to apply the Competition Code—which reflects the part IV anticompetitive conduct provisions of the *Trade Practices Act 1974*—to those unincorporated persons to whom part IV of the TPA does not apply for constitutional reasons.

Outcome: All state and territory governments have extended the Trade Practices Act prohibitions against anticompetitive behaviour. Accordingly, the Competition Code applies to all persons, including the Crown (in so far as it carries on a business), within a jurisdiction's reach.

Prices oversight

Commitment: Consider the merits of establishing independent sources of price oversight for government businesses enterprises.

Outcome: All Australian governments determined that independent prices oversight arrangements would be in the public interest. This function generally resides within regulatory authorities, but may also be undertaken by other institutions such as competitive neutrality units.

The key institutions are the Australian Competition and Consumer Commission (Australian Government), the Independent Pricing and Regulatory Tribunal (New South Wales), the Essential Services Commission (Victoria), the Queensland Competition Authority, the Economic Regulation Authority (Western Australia), the Essential Services Commission of South Australia, the Government Prices Oversight Commission (Tasmania), the Independent Competition and Regulatory Commission (ACT) and the Utilities Commission (Northern Territory).

Competitive neutrality

Commitment: Ensure regulatory and commercial neutrality between government businesses and competing private businesses where the benefits exceed the costs (see chapter 2). (Competitive neutrality principles are consistent with government subsidies and community service obligations that meet their social goals—the only obligation is that these be transparent, rather than hidden behind opaque cross-subsidisation with attendant competition restrictions.)

Outcome: In all states and territories, major government business enterprises have been corporatised, other significant businesses have been exposed to competitive neutrality principles, and competitive neutrality complaints units have been established. Nevertheless, outcomes across Australia are mixed, and there is scope for improving the coverage of competitive neutrality principles and the operation of complaints mechanisms.

Performance monitoring of government trading enterprises (GTEs) reveals that many have a return on capital below the risk free government bond rate (PC 2005b). The Productivity Commission observed that:

> … *without a commitment to better governance, the National Competition Policy reform objective of operating GTEs commercially will not be fully achieved' … failure to meet this objective has potentially serious consequences, given that these GTEs have combined assets of more than $174 billion and generate $55 billion in revenue annually.* (PC 2005c)

Failure to achieve the risk free bond rate would, other things being equal, suggest that the community would be better served if governments simply invest the capital associated with their businesses rather than continue to manage them. Although simplistic, this indicates the need for GTEs to have clearly delineated commercial and non-commercial objectives and to ensure the latter are met efficiently. Further reform in this area is required.

Structural reform of public monopolies

Commitment: Remove regulatory functions from government businesses and review the merits of separating any monopoly elements, before privatising a public monopoly or introducing competition (see chapter 3).

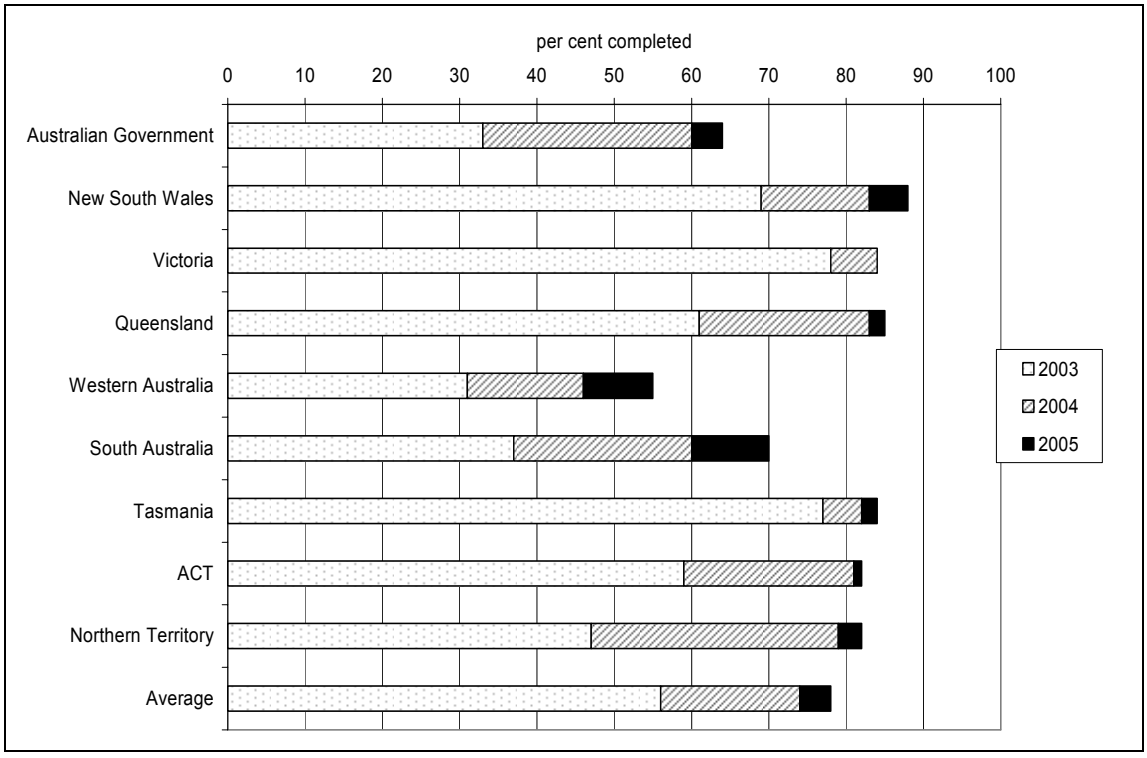
Outcome: Governments generally have met these commitments, in particular recognising the need to remove regulatory functions from government businesses that operate in markets with private sector competitors. One notable failure was the Australian Government's unwillingness to undertake a structural separation review before partly privatising Telstra. The government preferred to prohibit anticompetitive conduct and facilitate access to telecommunications services through special provisions in the Trade Practices Act.

Legislation review (extant legislation)

Commitment: Review all legislation containing competition restrictions (as at 1996) to ensure that the restrictions are in the public interest and remove those restrictions that are not (see chapters 9–19).

Outcome: Each government identified laws regulating areas of economic activity. Most of these have been reviewed, and restrictions found not to provide a community benefit removed. In aggregate terms, around 85 per cent of governments' nominated legislation has been reviewed and, where appropriate, reformed. For priority legislation, the rate of compliance is around 78 per cent[1] (see figure 1).

Figure 1: Governments' progress with completing their priority legislation review and reform matters, 2003–05



The legislation review program required a substantial commitment by governments and has been pivotal in removing barriers to competition across activities as diverse as the professions and occupations through to transport and communications. Agricultural marketing is one area in which NCP reviews have led to substantial removal of unwarranted restrictions on

[1] Recognising the burden on governments from conducting reviews and implementing reforms, and that the greatest community benefit would arise from prioritising legislation with the greatest impact on competition, the Council nominated priority areas of regulation (NCC 2003a, ch. 4). It has scrutinised around 800 pieces of priority legislation and monitored outcomes in a further 1000 non-priority areas.

competition. Examples include all governments repealing price and supply controls on drinking milk; Queensland ending its export marketing monopoly for barley; Victoria deregulating its monopoly barley marketing arrangements (and NCP reviews recommending liberalisation of similar arrangements in South Australia); Western Australia liberalising grain marketing restrictions; Queensland, Western Australia and Tasmania removing supply and marketing restrictions on eggs; Western Australia and South Australia removing entry and pricing restrictions on bulk handling; and all jurisdictions removing centralised price fixing for poultry growing services.

The legislation review program has resulted in a material reduction in unwarranted competition restrictions. Governments have introduced major reforms in tandem with systematically transforming a multitude of smaller productivity-impeding regulations. While some competition restrictions may have appeared relatively isolated in their impact, in total they were a significant drag on the economy's growth potential.

The legislation review program is based on governments' initial screening of their legislation for competition restrictions, which has occasionally proved limiting. There are instances where legislation also appears to impinge on efficiency, or involves excessive 'red tape', without necessarily restricting competition. These instances are not addressed by governments' present NCP commitments.

Where a review raises issues with a national dimension, the NCP provides that it can be undertaken on a national basis. However, the conduct of national reviews has often been unsatisfactory. In several cases, governments have not implemented recommended reforms, owing to delays from protracted intergovernmental consultation: some national reviews have been underway for many years. The outcomes from national reviews appear to depend on two main considerations: (1) who conducts the national review and (2) the relative costs and benefits of national consistency versus policy competition.

Ideally, independent agencies should conduct national reviews, such as the Productivity Commission's national review of architects. Reviews that are not sufficiently independent may settle on 'consensus' or least common denominator reforms that all the parties can achieve leading to very little benefit in some jurisdictions. Apart from reduced duplication, the chief benefit of national reviews is the scope to engender regulatory consistency throughout Australia, thereby reducing compliance and transactions costs. On the other hand, the Council has observed innovative approaches to reform in one jurisdiction being adopted by others. Reform in one jurisdiction can thus provide a catalyst for other jurisdictions to act in areas that seemed (politically) intractable.

Legislation review (new legislation)

Commitment: Ensure that all new legislation containing competition restrictions is in the public interest (see chapter 4).

Box 1: Elements of best practice gatekeeping

Institutional environment settings (COAG and individual governments)

- A high level commitment by governments to the importance of good process to achieve high quality regulation
- Consideration given to assessing the quality of the stock of legislation, in addition to ensuring the flow of high quality new legislation
- (At least initial) external monitoring, comparison and assessment of the performance of gatekeeping systems as governments move to improve these arrangements
- Cross-jurisdictional information exchange through the Regulation Review Forum as a vehicle to continually promote best practice gatekeeping systems

Whole-of-government process issues

- Legislative underpinning for the application of regulatory impact assessments for primary, subordinate and quasi regulation
- Structured integration of regulation impact statement (RIS) processes into agencies' regulatory policy development roles
- Mandatory guidelines for the conduct of RISs, with appropriate cost–benefit assessment frameworks that focus on the quantification of costs and benefits for consumers, business, government and the community, and that appropriately explore alternatives to meet the stated objectives
- Greater awareness of the risks of using regulation to achieve off-budget solutions and/or to placate vested interests, rather than adopting a community-wide perspective

The gatekeeper

- Optimal model: an independent statutory gatekeeper established under a separate Act or through protocols to ensure independence
- Second best: an independent entity removed from a direct role in policy formulation, with an appropriate 'Chinese wall', adequate resources and a high level line of reporting
- Responsibility for 'fail safe' systems to ensure that all regulatory proposals are scrutinised to determine whether a RIS should be undertaken, and that RISs are conducted in a timely manner to avoid *ex post* justifications
- Capability to provide/withhold certificates of adequacy for RISs before consideration by Cabinet (or to not accept poor quality RISs)
- Training capabilities and high level imprimatur to work with agencies in developing RISs
- Public monitoring and exposure of agencies' compliance with RIS requirements and the quality of RISs prepared

Transparency

- Where appropriate, the conduct of RISs at the consultation stage and for the decision maker
- RISs made publicly available when legislation is introduced, including expurgated RISs where genuine confidentiality considerations arise
- A publicly accessible repository for RISs
- Incorporation of sunset clauses to facilitate *ex post* evaluation of the projected costs and benefits of the RIS

Source: chapter 4.

Outcome: The integrity of governments' regulation impact assessment processes is central to their capability to meet the commitments on new legislation. The process of ensuring governments develop effective and efficient regulation is referred to as 'gatekeeping'. All governments have gatekeeping mechanisms that could, in principle, operate to ensure compliance with their NCP commitments. The Council has strong reservations, however, about whether all gatekeeping processes are delivering appropriate outcomes in practice.

Effective gatekeeping is necessary to guard against the introduction of legislation that is not in the public interest. Australia is subject to a rapid regulatory accretion, and governments face a variety of pressures to enact new laws. Where new laws are in the public interest, community welfare is enhanced. But the costs as well as the anticipated benefits of regulation need to be assessed rationally. This is the role of gatekeeping systems, and while there have been improvements, most governments have systems that fall short of best practice and so may not ensure quality regulation in the future (see chapter 4). Box 1 summarises the Council's view of the necessary ingredients for effective gatekeeping arrangements.

Third party access to essential infrastructure

Commitment: A national regime to facilitate third party access, on reasonable terms and conditions, to essential infrastructure services with natural monopoly characteristics.

Outcome: Part IIIA of Trade Practices Act has been established to provide three pathways for a party to seek access to an infrastructure service: via declaration; via an existing effective access regime; or by meeting terms and conditions set out in voluntary undertakings approved by the Australian Competition and Consumer Commission (ACCC).

Under part IIIA, the decision on whether a significant infrastructure facility is subject to regulation is generally separated from regulation of that facility. The Council thus advises on whether access to an infrastructure facility should be regulated by the ACCC or a similar state body, or not at all. The Council has assessed:

- 19 declaration applications covering a diverse range of activities including, payroll deductions services, gas distribution and electricity services, airport ramp and cargo services, rail services, transmission of sewage services, and water storage services
- 18 certification applications covering gas pipelines, shipping channels, rail track services, electricity distribution networks and port and maritime services
- two applications for coverage under the National Gas Code and 29 applications for revocation of coverage.

Electricity

Commitment: Structural, governance, regulatory and pricing reforms to promote competition in electricity generation and retailing (see chapter 6).

Outcome: New South Wales, Victoria, Queensland, South Australia and the ACT are part of an interconnected national electricity market. Tasmania entered the national electricity market in 2005, and its link to the mainland is expected to be commissioned in 2006. The benefits of the national electricity market include providing for customers to choose suppliers (generator, retailer and trader), the ability of generation and retail suppliers to enter the market, and the capacity for interstate and intrastate trade in electricity. Although outside the national electricity market, Western Australia is restructuring its electricity monopoly (Western Power) to provide for greater competition, and the Northern Territory has introduced an access regime for transmission and distribution, and a licensing scheme to enable competition in generation and retail.

Most governments have met their commitments under the electricity agreements, although some critical elements remain outstanding. While considerable progress has been made towards achieving the goal of a fully competitive national electricity market, the electricity market has significant deficiencies that that the current reform program does not specifically address. These shortcomings were identified in 2003 during the Ministerial Council on Energy's deliberations on a future reform agenda for electricity, but there has been little further progress.

Gas

Commitment: Remove legislative and regulatory barriers to the free trade of gas both within and across state and territory boundaries, and provide third party access to gas pipelines (see chapter 7).

Outcome: The objective of national free and fair trade in gas is now largely realised. The Australian gas market is increasingly competitive, dynamic and efficient. All governments have met their commitments in relation to structural reform and franchising and licensing principles. New South Wales, Victoria, Western Australia, South Australia and the ACT have removed regulatory barriers to full retail contestability. Queensland has deferred implementing full retail contestability for customers consuming less than 1 terajoule of gas per annum.

Road transport

Commitment: Improve the efficiency of the road freight sector (see chapter 8).

Outcome: The NCP road transport reform program comprises 31 initiatives covering six areas: registration charges for heavy vehicles, transport of dangerous goods, vehicle operations, heavy vehicle registration, driver licensing, and compliance and enforcement. COAG endorsed frameworks covering 25 of the initiatives for assessment under the NCP.

The (assessed) road transport reform commitments are almost complete—of 147 reform elements across all jurisdictions, 143 have been satisfactorily implemented. Western Australia has two reforms outstanding, and the Australian Government and the ACT have one each. These outstanding commitments relate to relatively minor areas of the reform agenda.

Not all road transport reform elements are subject to assessment under the NCP and there is significant scope for further productivity enhancing reforms in road, and a need for a more integrated agenda for road and rail.

Water

Commitment: COAG agreed to a strategic water reform framework in 1994, which was incorporated into the 1995 NCP agreements. COAG's main objectives were to establish an efficient and sustainable water industry and to arrest widespread natural resource degradation, for which water use is partly responsible. The framework covers pricing, the appraisal of investment in rural water schemes, the specification of, and trading in, water entitlements, resource management (including recognising the environment as a user of water via formal allocations), institutional reform and improved public consultation. Past NCP assessments have considered governments' implementation of particular elements of the water reform framework, with the 2005 NCP assessment examining each government's implementation of the entire framework.

Outcome: The 2003 and 2004 NCP assessments revealed that all governments recognise the importance of effective and efficient water management. Each is making progress towards this objective although jurisdictions are at different stages of implementation. Notably, urban pricing is now achieving at least the lower bound of cost recovery and elements of the rural reform program are underway. Substantial work remains, however, particularly to implement compatible systems of water access entitlements and appropriate environmental allocations, and to establish effective water trading arrangements.

COAG agreed in 2003 to refresh the 1994 reform framework and provide a forward water reform program, reaching the Intergovernmental Agreement on a National Water Initiative in 2004.[2] In accord with this agreement, the

[2] Western Australia and Tasmania did not sign the Intergovernmental Agreement on a National Water Initiative. Tasmania subsequently signed the agreement in June 2005.

National Water Commission is conducting the 2005 NCP assessment of jurisdictions' compliance with water commitments.

Much has been achieved, but more is needed

Many reform objectives under the NCP have substantially been met. All governments have appropriate prices oversight mechanisms in place and generally have removed regulatory functions from public monopolies operating in competitive markets. Further, governments have applied competitive neutrality principles to their large government businesses and have complaints mechanisms in place. These commitments continue to be relevant as long as governments own businesses. Similarly, commitments continue relating to third party access to the services provided by essential infrastructure facilities.

The commitments relating to the quality of new legislation (gatekeeping) remain fundamental to Australia's prosperity. Governments' gatekeeping mechanisms need to be improved substantially and subject to oversight to assist movement towards more effective arrangements capable of delivering regulation without unwarranted efficiency and compliance costs.

The timeframe set by COAG for the legislation review and reform agenda was not met. However, substantial elements of the program have been delivered, and the reform dividend to the nation is evident. One drawback not envisaged by the NCP's focus on removing unwarranted restrictions on competition is the extent of costs (efficiency, compliance and administration) sometimes imposed to support restrictions that are in the public interest. It is possible for example, for a non discriminatory measure to have an excessive compliance burden, yet meet the NCP obligations. Similarly, regulations that impede efficiency but which do not involve competition restrictions may not even have been reviewed under the NCP. In this context, enhanced gatekeeping arrangements could ensure an improved flow of regulation, but do little to improve excessive 'red tape' in the stock.

For the road transport reform agenda, the NCP obligations have substantially been met. However, further integrated and coordinated reform of land transport (and coastal shipping and ports) is needed. Energy reform has progressed reasonably well in relation to the specified NCP obligations. Nevertheless, COAG's objective of a fully competitive national electricity market has not yet been attained, and reviews have identified significant deficiencies (not addressed under the current NCP reform program).

The NCP incorporates general programs, sector-specific reforms and sound public policy principles and processes within an embracing reform platform. As the Organisation for Economic Cooperation and Development (OECD) observed recently, Australia has become a model for other OECD countries, in particular, because of:

> … *the tenacity and thoroughness with which deep structural reforms were proposed, discussed, legislated, implemented and followed-up in virtually all markets, creating a deep-seated 'competition culture'* (OECD 2005, p. 11)

Reflecting the NCP's broad agenda and the commitment required by all governments, it is not surprising that outcomes across reform areas and between jurisdictions are mixed (see table 1). The key areas of unfinished business include: completing the legislation review program; improving the application of competitive neutrality principles; the Australian Government adhering better to structural reform principles; and all governments making a concerted effort to improve their regulation gatekeeping arrangements.

Table 1: Summary of outcomes, by jurisdiction

	Energy reform	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
Australian Government	✓	x	✓	x	x	✓✓✓✓
New South Wales	✓	✓	✓	✓	✓	✓
Victoria	✓	✓	✓	✓	✓	✓✓✓
Queensland	✓	✓	✓	✓	✓	✓✓
Western Australia	✓	x	x	✓	x	✓
South Australia	✓	✓	✓	✓	x	✓✓
Tasmania	✓	✓	✓	✓	✓	✓✓
ACT	✓	x	✓	✓	✓	✓
Northern Territory	✓	✓	✓	✓	✓	✓✓

However, more is required than finalising an agenda conceived a decade ago. As productivity enhancing reforms have been implemented, new challenges (many not envisaged in 1995) have emerged. Some have likened the reform task to walking up a down escalator—in a globally competitive environment, reform inertia means declining living standards. The relevance of existing regulations needs to be re-assessed continually and what is considered best practice today may tomorrow be an impediment to the nation achieving its growth potential.

Competition payment reductions

For the 2003 and 2004 NCP assessments, the Council assessed governments as not meeting their NCP obligations where they failed to undertake reform activity specified in intergovernmental agreements. For the legislation review and reform obligations, a compliance failure arose where:

- the review and reform of legislation was not completed, or
- completed reviews and/or reforms did not satisfy NCP principles.

Reflecting the significance of each compliance failure (and indications from governments as to their preparedness to address noncompliance), the Council recommended reductions to payments as either deductions or suspensions:

- *Permanent deductions* are irrevocable reductions in governments' competition payments. In 2004, the Council recommended permanent deductions for specific compliance failures. Where relevant governments have not improved compliance in these areas for this 2005 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 2004, the Council recommended suspensions to apply until the relevant governments met pre-determined conditions, at which time the suspended 2004-05 competition payments would be released. Where commitments have not been made or met for this 2005 NCP assessment, or reform action has not been 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 has been made to improve compliance for this 2005 NCP assessment, the Council has recommended that the 2004 suspension be lifted or reduced, and that funds be released to the relevant jurisdiction. Where satisfactory progress has not been made, the Council has recommended that all or part of the suspension be converted to a permanent deduction.

In this 2005 NCP assessment the Council has therefore made two types of recommendations, relating to whether:

1. some or all of the suspended 2004-05 competition payments should be released to governments or deducted permanently
2. governments' 2005-06 competition payments should be reduced.

The three forms of reduction to competition payments were a feature of the 2003 and 2004 NCP assessments. However, the Australian Government has advised that the 2005-06 competition payments (arising from this 2005 NCP assessment) represent the last such payments. Consequently, it would not be

appropriate for the Council to recommend suspensions that would require a further review of progress for them to be lifted. The Council, therefore, has limited any payment reduction recommendations to permanent deductions.

In addition, the Council has not assessed progress with water reform, which is now a matter for the National Water Commission. The Australian Government is responsible for coordinating the assessment recommendations of the commission and the Council.

Recommendations to reduce competition payments are expressed as a percentage of a relevant jurisdiction's maximum notional payment for the year, rather than specific dollar amounts. Reductions have always been, and continue to be, denominated in five percentage point increments. This approach provides for equality of treatment across jurisdictions of different sizes, but involves broad judgments about the likely effects of particular noncompliances. The Council perceives little value in attempting to be overly precise by finetuning payment reductions below five percentage point increments.

Relevant to the Council's recommendations on suspended 2004-05 competition payments and the allocation of 2005-06 competition payments is each government's continuing progress in meeting its remaining priority legislation review and reform obligations. In assessing governments' progress, the Council has accepted that in certain areas:

- governments are not in a position to progress some areas of legislation review and reform because interjurisdictional processes (that is, national reviews) are yet to be concluded. These instances of incomplete activity do not bear adversely on payment recommendations.

- 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 offering identical services under other titles (such as rehabilitation therapist).

Each government's 'pool' of noncompliant legislation reflects some compliance breaches where these mitigating circumstances are relevant.

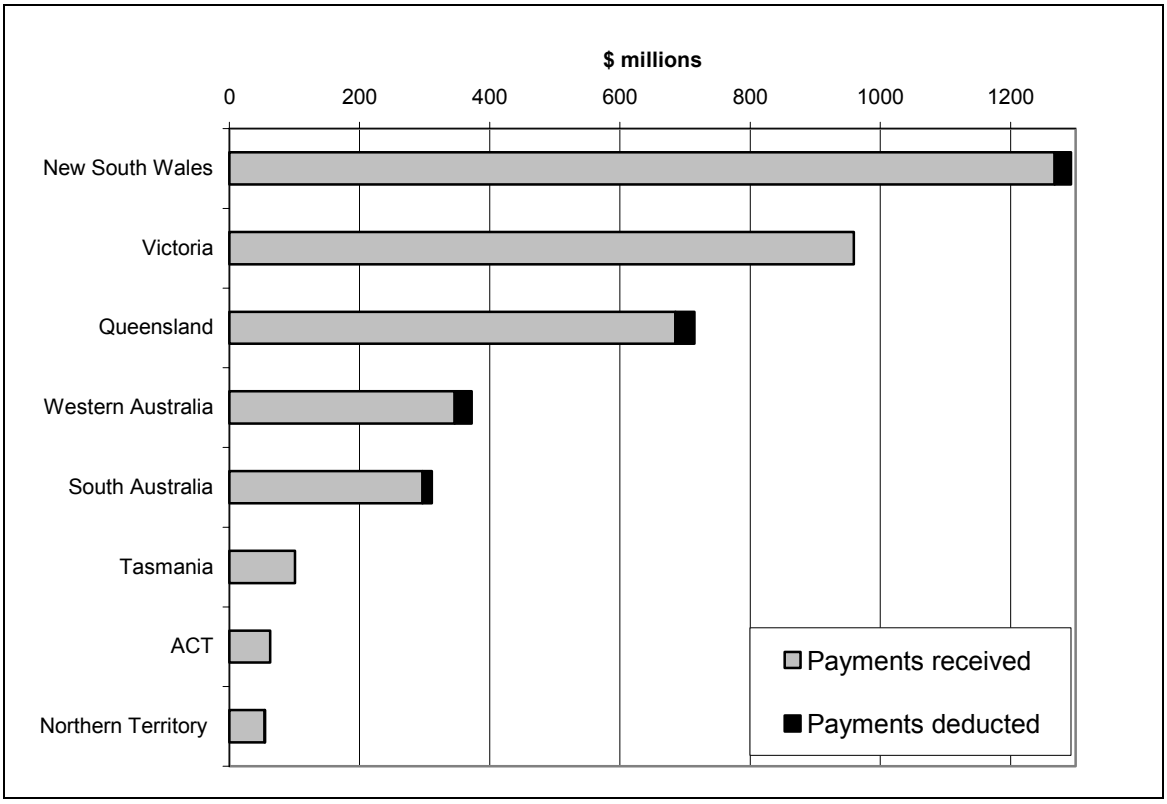
Competition payments commenced in 1997-98. On the Council's recommendation, the Australian Government applied one substantive payment reduction prior to the 2003 NCP assessment—$270 000 for Queensland in relation to an urban water pricing matter.

Figure 2 shows that, despite the significant reductions (affecting New South Wales, Queensland, Western Australia, South Australia and the Northern Territory) applied after the 2003 and 2004 NCP assessments, around 98 per cent of $3.9 billion of available competition payments was paid to governments from 1997-98 to 2003-04. Victoria, Tasmania and the ACT

received 100 per cent of their payments, whereas Western Australia received the lowest proportion at around 93 per cent.

The following sections present the Council's recommendations for 2005-06, and the suspended 2004-05, competition payments. Table 2, at the end of this overview, provides a summary of recommendations.

Figure 2: Total competition payments received by jurisdiction, 1997-98 to 2003-04[a]



[a] Excludes additional competition payments of around $1.5 billion available for 2004-05 and 2005-06 because this 2005 NCP assessment includes the Council's recommendations in relation to suspended 2004-05 payments, and the allocation of 2005-06 payments.

Recommendations

New South Wales

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	✓	✓

Water

- *Appropriate environmental allocations*. Over several assessments, the Council sought evidence that New South Wales's environmental allocation arrangements are based on the best available science and that robust socioeconomic evidence supported departures from the science based levels. Arising from the 2004 NCP assessment, the Australian Government imposed a specific suspension of 10 per cent of 2004-05 competition payments for noncompliance, recoverable if New South Wales provided evidence that it establishes environmental allocations in accord with its COAG obligation. This matter is now subject to separate assessment by the National Water Commission.

Legislation review

New South Wales has completed the review and, where appropriate, reform of 91 per cent of its stock of legislation, including 88 per cent of its priority legislation and 94 per cent of its non-priority legislation.

- *Chicken meat industry negotiations*. The Poultry Meat Industry Act restricted competition between processors and growers by setting base rates for growing fees and prohibiting agreements not approved by an industry committee. The Australian Government implemented the Council's recommendation of a specific suspension of 5 per cent of 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, implementation of NCP compliant reforms.

  New South Wales conducted an NCP review of the Act, leading to the passage of the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill through Parliament in June 2005. The amendments introduce reforms that meet the state's NCP obligations. The Council thus recommends the release to New South Wales of the 2004-05 competition payments suspended for noncompliance.

- *Monopoly on domestic rice sales*. The 1995 NCP review of the statutory rice marketing monopoly recommended removing the domestic monopoly while retaining the export monopoly. The New South Wales Government failed to implement the recommendations. To progress matters, in 1999 a working group developed a model for a rice export authority under Commonwealth jurisdiction, which would liberalise domestic rice marketing. At the time of the 2003 NCP assessment, the Australian Government was consulting with other states and territories on this matter. Consequently, the Council considered that there should be no adverse payments outcome because New South Wales was unable to expedite reform.

  In November 2003, New South Wales extended the rice vesting arrangements until 2009 and reported that the consultations on the federal rice export authority had been abandoned. In March 2004, the

state Minister for Agriculture and Fisheries wrote to the Council to confirm that the government would undertake a new review of the rice marketing arrangements. The Australian Government imposed 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.

The 2005 NCP review (provided to the Council in June 2005) found that the export arrangements deliver a net public benefit, but that domestic regulation imposes a net cost. Without a national single export desk, however, it contended that the net benefit would be eroded if domestic trading in New South Wales grown rice was allowed (because it would not be possible to prevent exports of New South Wales-grown rice via other states). The review consequently recommended retention of the vesting arrangements, which the government accepted.

The review relied on data and analysis provided by the industry to establish the benefits of an export single desk, but it failed to present this evidence in any detail or demonstrate that it was tested appropriately. Moreover, the review stated an explicit preference for a deregulated domestic market with a single export desk, but contended that 'there is arguably no feasible failsafe mechanism … to protect these benefits other than through a national single desk, an approach previously ruled out'. This finding, which goes to the heart of the second leg of the CPA clause 5(1) test (that the objectives of the legislation cannot be achieved without restricting competition) was not evidenced by any exploration of alternatives. There is a range of relevant alternatives in Australia, from the domestic deregulation of barley in South Australia and Western Australia, Graincorp's authorisation of canola and sorghum buyers in New South Wales, and the sugar vesting exemptions administered by the Sugar Industry Authority in Queensland. All of these arrangements provide for single export desks coincident with domestic deregulation.

It is useful to revisit the key recommendation of the 1995 NCP review of rice marketing that:

> … *the New South Wales Government agree to provide a state based regime to secure single desk export selling for the New South Wales rice industry from 1 February 1999, whether by way of an attenuated vesting arrangement or otherwise, but which has minimal anticompetitive effects, in the event that the Commonwealth does not grant an export licence or equivalent.* (NSW Government Review Group 1995, p. 46)

To meet the COAG requirement for a properly constructed review process, it was incumbent on New South Wales to ensure the 2005 rice review assessed whether the state could liberalise domestic rice marketing by exempting rice sold domestically from vesting, on conditions that protect the board's export monopoly. An option that should have been explored would be to restrict who may buy rice from growers to buyers authorised by a suitably reconstituted marketing board. Such authorisation could be conditional on these buyers accepting a contract that prohibits the export

of this rice unless it has been substantially transformed, and that prohibits the sale of this rice domestically unless under a contract that prohibits exporting by the next buyer, and so on—in a similar manner to the distribution and resale restrictions that are often imposed in other industry sectors. Normal commercial sanctions, such as contract termination and litigation, would be available to the board and, in turn, authorised buyers in the event of any breach of these conditions. The board's costs of administering and enforcing these arrangements could be recovered from authorised buyers.

On 14 October 2005, the Minister for Primary Industries informed the Council that the New South Wales Government intended to reform regulations governing the market for domestic trade in rice in New South Wales while retaining a single desk for export sales. The proposed measures seek to safeguard the export single desk through appropriate licensing arrangements. The main elements of the proposed scheme are:

- a single desk arrangement for rice exports from New South Wales will be retained
- an "authorised buyer" scheme will be introduced for domestic trade in rice
- the Rice Marketing Board will administer the scheme, subject to appeals to the New South Wales Administrative Decisions Tribunal
- the single desk will be protected through the sanction for any person or corporation found to have breached the conditions of their licence (that is, exported rice) through the loss of their authorised buyer permit for a stipulated period of time
- the arrangements will commence in 2006, after the current crop has been harvested.

In discussions with the Council, the minister undertook that the necessary legislation would be enacted by the New South Wales Parliament before 30 November 2005.

New South Wales will need to pass the proposed legislation by this date to comply with its NCP commitments. If it does not, the Council considers that New South Wales will have failed to meet its CPA commitments in relation to rice marketing and thereby failed to satisfy the conditions for release of the suspended 2004-05 NCP payments. The Council does not support any extension to the 30 November 2005 timeframe.

Other noncompliant legislation review and reform matters. The items remaining in the New South Wales pool do not warrant any reduction of 2005-06 competition payments.

New South Wales pool

Primary industries: veterinary surgeons

Transport: taxis

Health: pharmacy; dental technicians

National reviews: agricultural and veterinary chemicals (and stock medicines); legal practice; trade measurement

Assessment

In relation to New South Wales 2004-05 competition payments, the Council recommends:

- ***releasing in full the payments suspended for noncompliance with obligations relating to poultry meat legislation***
- ***a permanent deduction of the payments suspended for noncompliance with obligations relating to rice marketing legislation.***

In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance relating to the regulation of rice marketing.

If New South Wales enacts proposed reforms to legislation governing rice marketing by 30 November 2005, the Council recommends:

- ***releasing in full New South Wales 2004-05 competition payments suspended for noncompliance in rice marketing***
- ***payment in full of New South Wales 2005-06 competition payments .***

Victoria

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	✓	✓✓✓

Victoria has completed the review and, where appropriate, reform of 88 per cent of its stock of legislation, including 84 per cent of its priority legislation and 91 per cent of its non-priority legislation. The items remaining in Victoria's pool do not warrant any reduction to 2005-06 competition payments.

Victorian pool

Primary industries: fisheries

Health: pharmacists

Professions/occupations: legal practice (conveyancing)

Other: lottery exclusive licences

National reviews: legal practice; agricultural and veterinary chemicals; drugs, poisons and controlled substances; trade measurement; travel agents

Assessment

The Council recommends that Victoria receive its full allocation of 2005-06 competition payments.

Queensland

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	✓	✓✓

Energy

- *Failure to progress gas reform.* In the 2004 NCP assessment, the Council assessed that Queensland had not made progress towards extending contestability to commercial and industrial customers using 1–100 terajoules of gas a 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 posed transitional issues for all jurisdictions, and allowed 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 Australian Government implemented a specific suspension of 5 per cent of 2004-05 competition payments pending Queensland's implementation of the findings of the cost–benefit study.

  Queensland has passed a Regulation to extend retail gas contestability from 1 July 2005 to commercial and industrial reticulated gas customers using 1–100 terajoules a year. The practical extension of contestability, however, requires Queensland to finalise market operation and business rules. Queensland will give effect to the rules in a Regulation under the Gas Supply Act scheduled to commence on 1 November 2005. Apart from the finalisation of the rules, there are no remaining barriers to effective contestability to customers using 1–100 terajoules a year. This addresses Queensland's obligations in this area. Consistent with Queensland's undertakings on this matter, the Council would expect Queensland to review no later than 2007 its decision not to extend contestability to tranche 4 customers.

The Council recommends the release of the 2004-05 competition payments suspended for full retail contestability not being extended to gas customers in line with the findings of the state's cost–benefit study.

- *Failure to progress electricity reform*. In the 2003 NCP assessment, the Council found that Queensland had not introduced full retail contestability as required under the NCP electricity reform agreements. Queensland agreed to consider introducing contestability for customers consuming 100–200 megawatt hours a year (tranche 4A) and to further review the immediate introduction of full retail contestability. As recommended by the Council, 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.

  For the 2004 NCP assessment, Queensland met its obligation to introduce contestability for tranche 4A customers. It did not, however, further review the introduction of full retail contestability. Accordingly, the Australian Government:

  – released the suspended 10 per cent of 2003-04 competition payments, in recognition that the state had implemented contestability for tranche 4A customers

  – permanently deducted the 15 per cent of 2003-04 competition payments suspended pending the outcome of the wider review of full retail contestability

  – suspended 15 per cent of 2004-05 competition payments, pending the completion of the review and implementation of its findings.

  On 28 September 2005, the Queensland Premier announced that full retail contestability would be introduced for small businesses and households from 1 July 2007 (Beattie 2005). The Electricity Amendment Regulation (No.2) 2005 was passed on 6 October 2005 to give effect to the July 2007 starting date. Accordingly, the Council recommends releasing in full the 15 per cent of 2004-05 competition payments suspended pending the completion of the review and implementation of its findings.

Legislation review

Queensland has completed the review and, where appropriate, reform of 87 per cent of its legislation, including 85 per cent of its priority legislation and 92 per cent of its non-priority legislation.

- *Regulation of liquor sales*. 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 size. The

restrictions apply statewide, notwithstanding an objective of protecting country hotels. The Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments.

Given the continued lack of progress, the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments for continued noncompliance.

- *Other noncompliant legislation review and reform matters*. The items remaining in Queensland's pool do not warrant any reduction to 2005-06 competition payments.

Queensland pool

Primary industries: fisheries

Transport: taxis

Health: pharmacy; occupational therapists; speech pathologists

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

National reviews: drugs and poisons; legal practitioners; trade measurement; agricultural and veterinary chemicals

Assessment

In relation to Queensland's 2004-05 competition payments, the Council recommends:

- ***releasing in full the payments suspended for noncompliance with gas reform obligations***

- ***releasing in full the payments suspended for noncompliance with obligations relating to full retail contestability for electricity consumers.[3]***

In relation to 2005-06 competition payments, the Council considers that the matters identified in this assessment warrant a permanent deduction of 5 per cent for noncompliance relating to the regulation of liquor sales.

[3] In correspondence with the Council and with the Australian Government Treasurer, the Queensland Government has also sought to be paid competition payments initially suspended in 2002-03 and then deducted in 2003-04 for failure to implement full retail contestability. In the Council's view this payment was appropriately deducted and should not be refunded now.

Western Australia

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	x	x	✓	x	✓

Energy

- *Structural electricity reforms.* At the time of the 2004 NCP assessment, Western Australia had failed to implement an essential aspect of the reform package recommended by the Electricity Reform Task Force—namely, the structural separation of Western Power into generation, network and retail entities. The Australian Government implemented a suspension of 15 per cent of 2004-05 competition payments, pending the passage of legislation to disaggregate Western Power. (The Council observed that the suspension would have been significantly larger if not for the government's strong performance in other aspects of electricity reform.)

  On 22 September 2005, Western Australia passed the *Electricity Corporations Act 2005,* which provides for Western Power to be split into four independent functional entities by 31 March 2006.

  The Council recommends the release to Western Australia of the 2004-05 competition payments suspended for noncompliance with structural electricity reforms.

Legislation review

Western Australia has completed the review and, where appropriate, reform of 68 per cent of its stock of legislation, including 55 per cent of its priority legislation and 77 per cent of its non-priority legislation.

- *Regulation of retail trading hours*. Under the Retail Trading Hours Act, Western Australia is the only jurisdiction to heavily restrict week day trading hours and to prohibit large retailers (outside of tourist precincts) from opening on Sundays. The Australian Government imposed a permanent deduction of 10 per cent of the state's 2003-04 competition payments and 10 per cent of 2004-05 competition payments.

  In 2005, Western Australia conducted a referendum on extending trading hours—58 per cent of voters supported the 'no' case for extended weeknight trading and 61 per cent supported the 'no' case for Sunday trading. The government advised the Council that it would not address the restrictions on retail trade because the referendum had established the public interest for the restrictions. It contended that the Council, to conclude otherwise, would have to presume it knew more about the public interest than the public.

The NCP obliges governments to remove competition restrictions unless they can demonstrate that the restrictions benefit the community overall (being in the public interest) and are necessary to meet objectives. Moreover, COAG (2000) directed that the Council, when making recommendations on competition payments, should consider whether the conclusion reached is within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Western Australia's independent review did not find there was a public interest in retail trading hours restrictions—a result mirrored by every NCP review of shop trading hours conducted across Australia.

The Council thus recommends a permanent deduction of 10 per cent of 2005-06 competition payments for continued noncompliance relating to retail trading hours legislation.

- *Regulation of liquor sales*. The Liquor Licensing Act contains a needs test, whereby a licence application can be rejected because the area has incumbent liquor outlets. The legislation further discriminates between hotels and liquor stores, with only hotels able to trade on Sundays. Following the 2003 NCP assessment, the Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments, for continued noncompliance.

  The government recently released a second liquor review, which found that the restrictions on competition are unwarranted and should be reformed. The findings are consistent with the state's previous liquor review (and all other NCP reviews of liquor conducted across jurisdictions). The government's response has been to initiate community consultations on the review's findings.

  There is little prospect of compliant reforms being introduced before the conclusion of this NCP assessment, so the Council recommends a permanent deduction of 5 per cent of the state's 2005-06 competition payments.

- *Potato marketing*. Western Australia is the only jurisdiction to regulate potato marketing. Legislation empowers a Potato Marketing Corporation to restrict the availability of land for growing potatoes for fresh consumption, and to fix the wholesale price of such potatoes. Following the 2003 NCP assessment, the Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments, based on the Council's assessment that neither the outcomes of the NCP review nor the government's arguments for retaining the arrangements were consistent with NCP obligations.

  In the lead-up to the 2004 NCP assessment, the Western Australian Government announced that it would amend the Act to change the basis of supply restrictions from growing area to quantity, and to 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 needed to have removed the supply and marketing controls. Consequently, the Australian Government imposed a permanent deduction of 5 per cent of 2004-05 competition payments.

There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Suspension pool.* For the 2004 NCP assessment, the Council assessed that the Western Australian Government had made poor progress in addressing its outstanding legislation review and reform items. The Australian Government imposed a 15 per cent pool suspension of the state's 2004-05 competition payments (of which 5 percentage points attached to a failure to complete a raft of general health practitioner reforms).

Western Australian pool

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

Transport: marine and harbours legislation

Health: pharmacy

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

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 significant outstanding obligations on water industry legislation

Other: petroleum products pricing; retirement villages; credit legislation; town planning and development; building regulations; gaming exclusive licences; minor gambling; casinos and betting; totalisator exclusive licence

National reviews: travel agents; legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

For this 2005 NCP assessment, the government has, despite reminders over a number of assessments, made little progress in reforming its health practitioner legislation. Its progress in addressing commitments on other outstanding legislation has been slow. That said, there have been some advances. Most significantly, the Council accepts that the state's continuing reform of its grain marketing legislation meets its NCP obligation (see chapter 14). The operation of the Grains Licensing Authority has delivered demonstrable benefits to the Western Australian community, particularly grain growers. Moreover, it has provided a working model for reforming South Australia's barley marketing restrictions. Given the significance of the Western Australian grains sector, the Council considers that this important reform warrants a positive competition payment recommendation.

The Council recommends the permanent deduction of the 5 percentage points of 2004-05 competition payments suspended for failure to reform health practitioner legislation. Of the remaining 10 percentage points of suspended 2004-05 competition payments, the Council recommends that 5 percentage points be released to the state (primarily for its grain marketing reform) and 5 percentage points be deducted permanently.

In relation to 2005-06 competition payments, the Council recommends that 10 percentage points be deducted permanently for failure to address the remaining pool items.

Assessment

In relation to Western Australia's 2004-05 competition payments, the Council recommends:

- ***releasing in full the payments suspended for noncompliance with obligations relating to electricity structural separation***
- ***releasing one third (5 percentage points) of 2004-05 competition payments suspended for outstanding legislation review items (pool) and permanently deducting the remainder (10 percentage points).***

In relation to 2005-06 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 permanent deduction of 10 per cent for outstanding legislation review items (pool).***

South Australia

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	x	✓✓

South Australia has completed the review and, where appropriate, reform of 83 per cent of its stock of legislation, including 69 per cent of its priority legislation and 94 per cent of its non-priority legislation.

- *Barley marketing*. Two reviews of the Barley Marketing Act failed to produce credible public interest evidence to support the monopoly marketing arrangement. Following the 2003 NCP assessment, 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.

  After the imposition of the suspended penalty, the South Australian 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 Australian Government permanently deducted the suspended competition payments and imposed a suspension of 5 per cent of 2004-05 competition payments until South Australia instituted a complying reform implementation program.

  There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments for continued noncompliance. The lack of progress in this area is disappointing given the demonstrable benefits afforded the Western Australian community (particularly grain growers) from that state's reforms.

- *Regulation of liquor sales*. South Australia's Liquor Licensing Act contains a needs test, whereby the licensing authority can reject a licence application because the area already has liquor outlets that cater to the needs of the public. The Australian Government imposed a permanent deduction of 5 per cent of 2003-04 competition payments and 5 per cent of 2004-05 competition payments for noncompliance.

  There has been no further progress, so the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Suspension pool.* For the 2004 NCP assessment, the Australian Government imposed a 10 per cent pool suspension of the state's 2004-05 competition payment, with 5 percentage points attaching 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; dentists; occupational therapists; optometrists; psychological practices

Professions/occupations: employment agents; architects

Retail trading: shop trading hours; petroleum products regulation

Other: lotteries exclusive licence

National reviews: legal practitioners; agricultural and veterinary chemicals; drugs and poisons; trade measurement

For this 2005 NCP assessment, South Australia made good progress in reforming its health practitioner legislation. The Council thus recommends releasing to the state the 5 percentage points of 2004-05 competition payments suspended for failure to reform health practitioner legislation. The Council recommends permanently deducting the remaining 5 percentage points of the suspended 2004-05 competition payments, reflecting South Australia's failure to progress other pool items.

In relation to 2005-06 competition payments, the Council recommends a permanent deduction of 5 per cent for continued failure to address the remaining pool items.

Assessment

In relation to South Australia's 2004-05 competition payments, the Council recommends:

- ***permanently deducting the payments suspended for noncompliance with obligations relating to barley marketing***
- ***releasing one half (5 percentage points) of 2004-05 competition payments suspended for outstanding legislation review items (pool) and permanently deducting the remainder (5 percentage points).***

In relation to 2005-06 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 barley marketing arrangements***
- ***a permanent deduction of 5 per cent for noncompliance with obligations in relation to the regulation of liquor sales***
- ***a permanent deduction of 5 per cent for outstanding legislation review items (pool).***

Tasmania

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	✓	✓✓

Tasmania has completed the review and, where appropriate, reform of 91 per cent of its stock of legislation, including 84 per cent of its priority legislation and 96 per cent of its non-priority legislation.

The items remaining in Tasmania's pool do not warrant any reduction in 2005-06 competition payments.

Tasmanian pool

Health: pharmacy

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

Other: racing; gaming machine exclusive licences

National reviews: legal practitioners; drugs and poisons; agricultural and veterinary chemicals

Assessment

The Council recommends that Tasmania receive its full allocation of 2005-06 competition payments.

The ACT

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	x	✓	✓	✓	✓

The ACT has completed the review and, where appropriate, reform of 93 per cent of its stock of legislation, including 82 per cent of its priority legislation and 98 per cent of its non-priority legislation.

The items remaining in the ACT's pool do not warrant any reduction to 2005-06 competition payments.

ACT pool

Primary industries: veterinary surgeons

Transport: taxis

Health: pharmacy; dental technicians and prosthetists

Professions/occupations: employment agents

Other: betting exclusive licence; gaming machine exclusivity; interactive gambling; public sector superannuation

National reviews: travel agents; drugs and poisons; legal practitioners; trade measurement

Assessment

The Council recommends that the ACT receive its full allocation of 2005-06 competition payments.

The Northern Territory

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	✓	✓	✓	✓	✓✓

The Northern Territory has completed the review and, where appropriate, reform of 85 per cent of its stock of legislation, including 82 per cent of its priority legislation and 90 per cent of its non-priority legislation.

- *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 sell packaged liquor on Sundays. The Australian Government thus imposed a permanent deduction of 5 per cent of 2003–04 competition payments, for noncompliance.

  The Northern Territory subsequently demonstrated substantial progress by removing the anticompetitive needs test. However, it rejected the recommendation of its review to remove provisions that discriminate between sellers. It did not provide a convincing public interest case for this action. The Australian Government thus imposed a permanent deduction of 5 per cent of 2004-05 competition payments, for noncompliance.

  In August 2005, the Northern Territory Government reported that, as part of the implementation of an alcohol framework, it was embarking on a complete overhaul of the Liquor Act and that the restriction on Sunday takeaway sales would therefore continue 'at this time'. However, it confirmed the overhaul of the Act would not lead to the reintroduction of a needs test because the principle of the public interest is enshrined in the Liquor Act. It also confirmed that the overhaul of the Act will involve a competition impact analysis—including a cost-benefit assessment of alternative options to address harm minimisation—and that any legislative change will be subject to the territory's gate keeping requirements (which the Council considers are robust).

  The Council is encouraged by the government's commitments. However, as discriminatory Sunday trading arrangements remain in force, the Council recommends a permanent deduction of 5 per cent of 2005-06 competition payments, for continued noncompliance.

- *Other noncompliant legislation review and reform matters (pool).* The items remaining in the territory's pool do not warrant any reduction in 2005-06 competition payments.

Northern Territory pool

Primary industries: fisheries

Transport: taxis

Health: pharmacy; occupational therapists

Other: community welfare

National reviews: agricultural and veterinary chemicals; legal practitioners; drugs and poisons; trade measurement

Assessment

In relation to the Northern Territory's 2005-06 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

Prices oversight	*Energy reform*	*Road reform*	*Competitive neutrality*	*Structural reform*	*Legislation review*	*Gatekeeping (out of five)*
✓	✓	x	✓	x	x	✓✓✓✓

The Australian Government has completed the review and, where appropriate, reform of 78 per cent of its stock of legislation, including around 64 per cent of its priority legislation and 89 per cent of its non-priority legislation.

Australian Government pool

Primary industries: wheat; quarantine; export controls (food and wood); mining

Communications: broadcasting; radiocommunications; postal services

Transport: shipping

Health: pathology collection centres

Industry: anti-dumping

Other: interactive gambling

National reviews: agricultural and veterinary chemicals; drugs and poisons

Assessment

The Australian Government does not receive competition payments. As in previous assessments, the Council notes that the Australian Government is still to appropriately address some significant legislative restrictions.

Table 2: Council's recommendations on 2005-06 competition payments and suspended 2004-05 competition payments[a b]

	Decision by the Australian Government on 2004-05 payments	*Council's recommendations for suspended 2004-05 payments*	*Council's recommendations for 2005-06 payments*
New South Wales			
Water reform obligations	10% suspension	National Water Commission matter	na
Rice marketing legislation	5% suspension	5% permanent deduction[c]	5% permanent deduction ($13.3m)[c]
Chicken meat industry legislation	5% suspension	Release suspended funds in full	na
Queensland			
Full retail contestability electricity reforms	15% suspension	Release suspended funds in full	na
Full retail contestability gas reforms	5% suspension	Release suspended funds in full	na
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction ($7.8m)
Western Australia			
Structural electricity reforms	15% suspension	Release suspended funds in full	na
Retail trading hours regulation	10% permanent deduction	na	10% permanent deduction ($7.9m)
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction ($3.9m)
Regulation of potato marketing	5% permanent deduction	na	5% permanent deduction ($3.9m)
Outstanding legislation review items	15% pool suspension	Release 5%; permanently deduct 10%	10% permanent deduction ($7.9m)
South Australia			
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction ($3m)
Barley marketing arrangements	5% suspension	5% permanent deduction	5% permanent deduction ($3m)
Outstanding legislation review items	10% pool suspension	Release 5%; permanently deduct 5%	5% permanent deduction ($3m)
Northern Territory			
Regulation of liquor sales	5% permanent deduction	na	5% permanent deduction ($0.4m)

[a] The Australian Government applied a range of reductions (permanent deductions and suspensions) to governments' 2004-05 competition payments. In this 2005 NCP assessment, the Council has made recommendations on whether some or all of the suspended 2004-05 payments should be released, in addition to recommendations relating to reductions in governments' 2005-06 competition payments. [b] All dollar estimates in the table are subject to minor revision to reflect changes in population and inflation. [c] If New South Wales enacts proposed reforms to rice marketing arrangements by 30 November 2005, the Council recommends release of the suspended 5 per cent of 2004-05 competition payments and payment in full of 2005-06 competition payments.

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). All related reform areas were assessed by the National Competition Council up to 2004. In accordance with the Intergovernmental Agreement on a National Water Initiative, the National Water Commission will conduct the 2005 assessment of jurisdictions' compliance with water commitments.

To meet obligations for the 2005 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
  - removed legislative restrictions on competition unless it is demonstrated that restricting competition is in the public interest and is necessary to achieve the objectives of the legislation and, ensured that new legislation that restricts competition is similarly assessed —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—subject to separate assessment by the National Water Commission.

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 the 2004 NCP assessment, all governments had outstanding obligations for this program. The Council's approach to these outstanding matters is discussed in chapter 9.

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 2005 NCP annual reports

Government	*Date on which the Council received the 2005 annual report*[a]
Australian Government	2 May 2005
New South Wales	5 May 2005
Victoria	2 May 2005
Queensland	11 May 2005
Western Australia	27 July 2005
South Australia	28 April 2005
Tasmania	10 June 2005
ACT	23 May 2005
Northern Territory	2 August 2005

[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, 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 met this obligation, so the Council recommended the most significant competition payment reductions since the commencement of the NCP. Furthering the work of the 2003 NCP assessment (and the 2004 NCP assessment), this 2005 NCP assessment considers 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 2005 NCP assessment informs the Australian Government's distribution of NCP payments in 2005-06. Approximately $800 million is available in 2005-06, based on the states and territories meeting their reform obligations. This amount will be distributed among the states and territories on a per person basis (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 2005-06[a]

Government	*NCP payments in 2005-06 ($m)*
New South Wales	266.2
Victoria	197.3
Queensland	156.3
Western Australia	79.3
South Australia	60.3
Tasmania	19.0
ACT	12.7
Northern Territory	7.9
Total	799.2

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

Source: Government of Australia 2005.

2 Competitive neutrality

Competitive neutrality (CN) policy aims to eliminate resource allocation distortions by ensuring government businesses do not enjoy competitive advantages over private companies as a result of their public ownership. Clause 3 of the Competition Principles Agreement (CPA) sets down the CN 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 CN 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 CN principles to local government business activities.

The National Competition Council's assessment of governments' compliance with the CN obligations is based on each government's measures to:

- apply CN principles to all government business enterprises and significant government business activities (including local government businesses) to the extent that the benefits outweigh the costs

- effectively investigate and act on complaints that significant government business activities are not applying appropriate CN arrangements.

In addition this year the Council draws on the latest findings of the Productivity Commission's (PC) three-year research program into the performance of government trading enterprises.

Changes to competitive neutrality coverage

Governments have adopted various criteria for establishing the significance of a government business, such as its absolute size or its perceived impact on

the market. All governments have appropriate CN policies in place that apply to government business enterprises and to other significant (and local government) business activities.

Governments' CN policy statements specify coverage criteria. In its NCP assessments, the Council summarises changes to the application and coverage of CN principles reported by governments in their NCP annual reports. Changes to the approach and coverage of CN policy since the 2004 NCP assessment are noted below:

- *New South Wales*: State Water, formerly a business unit within the Department of Energy, Utilities and Sustainability, and Sydney Ferries were corporatised on 1 July 2004.

- *Victoria*: The Department for Victorian Communities, in conjunction with the Victorian Competition and Efficiency Commission (VCEC), the Department of Premier and Cabinet and the Municipal Association of Victoria investigated local councils' NCP compliance. Seventy-seven councils were found to be fully compliant and five needed to meet with the VCEC to clarify their CN policies. Victoria's 2004 NCP annual report noted that nine councils were assessed as requiring CN compliance training. This training has since been undertaken.

- *Western Australia*: In relation to smaller government businesses considered to be significant, Western Australia's practice is to review whether subjecting the business activity (that is, 'coverage') to CN is in the public interest. Unlike the situation in most other jurisdictions, a CN complaint against a government business cannot progress if the business is not covered.

  - Land Information Statutory Authority: In October 2003 Cabinet approved the establishment of a Land Information Statutory Authority. The department identified that the authority would operate in contestable markets, and a review concluded that the authority should be subject to CN principles.

  - radiation oncology: In Western Australia, one private and one public provider actively compete in the market for radiotherapy services. Since 2002, the private provider has claimed that the public provider's practice of bulk billing private patients places the private provider at a competitive disadvantage. A CN review may take place in 2006 (see the section on complaints below).

  - Eastern Goldfields Transport Board: Western Australia does not propose to undertake a CN review of the Eastern Goldfields Transport Board, despite a complaint against its charter bus operations.

- *South Australia*: In November 2004, the South Australian Government introduced policy guidelines for a new ownership framework for public non-financial corporations. The framework covers three areas: community service obligations, dividend payments and capital structure. The

government approved implementation of the new ownership framework for the South Australian Water Corporation (SA Water) and the South Australian Forestry Corporation (ForestrySA). The new framework supersedes the government's 1996 community service obligation (CSO) policy framework. Currently, specific CSO payments are only made to SA Water and ForestrySA. The Department of Treasury and Finance seeks advice from all agencies annually to confirm ongoing CN compliance for each significant business activity and to identify any new significant business activities.

- *Tasmania*: From 1 July 2004, the *Valuation of Land Act 2001* (Tas.) and the *Local Government Act 1993* (Tas.) were amended to remove impediments that prevented the imposition of rates on all government business enterprises. An exemption from rating was provided for the land on which Hydro Tasmania's generation assets are located. Instead, a memorandum of understanding is being negotiated with Hydro Tasmania, under which the business will pay a rates equivalent to the State Government. The memorandum is an interim arrangement, pending legislative amendments to require Hydro Tasmania to pay a rates equivalent.

Processes for handling complaints

Effective CN policy implementation requires that governments have mechanisms in place to investigate complaints that their businesses breach CN policies. Accordingly, CPA clause 3 requires governments to have a CN complaints handling mechanism. All governments have instituted complaints processes, and their 2005 NCP annual reports document recent complaints and investigations.

Australian Government

The Australian Government Competitive Neutrality Complaints Office (AGCNCO) is an autonomous unit within the Productivity Commission. Any individual or organisation can lodge a complaint on the grounds that: an Australian Government business activity has not been exposed to CN arrangements; that it is not complying with the arrangements; or that the arrangements are ineffective. The AGCNCO can recommend remedial action or that the Treasurer initiate a formal public inquiry into the matter.

The AGCNCO carried out one formal investigation in the period 1 July 2004 to 31 March 2005. On 27 April 2004, Chandler Enterprises lodged a CN complaint with the AGCNCO against EDI Post, a business unit of Australia Post. Chandler Enterprises alleged that mail house services undertaken by EDI Post are priced below commercial rates and derive an advantage in the

market through access to details about the mail volumes of competitors' clients, contrary to CN principles.

The AGCNCO found that EDI Post sets prices in accord with CN principles and that there is no evidence that EDI Post has obtained competitor information from other areas of Australia Post that could provide it with a competitive advantage. Consequently, it found that no further action is required in relation to this complaint.

New South Wales

The New South Wales Government has two mechanisms for dealing with CN complaints against government businesses. The State Contracts Control Board (SCCB) investigates CN complaints relating to tender bids made by government businesses (except those bids relating to local government). The Independent Pricing and Regulatory Tribunal (IPART) investigates all other CN complaints. The IPART and the SCCB investigate complaints that are referred by the Premier.

Complaints against local government businesses are initially referred to the relevant council for consideration. The Department of Local Government can review the matter if the complainant is not satisfied with the outcome. In its 2005 NCP annual report, New South Wales noted that the department did not receive any complaints requiring investigation.

In March 2005, the Premier received a complaint relating to the commercial activities of the Sydney Ferries Corporation. The complaint was referred to Sydney Ferries for an initial response. In the event of an unsatisfactory outcome, the complainant may request that the Premier refer the matter to IPART.

Victoria

The VCEC investigates complaints made by any affected person or business about a government business that may not be applying CN. It also advises government agencies on how to implement CN—for example, by providing training. The VCEC seeks information on CN compliance from agencies within three months of a breach of policy being found and reports to the government on this compliance.

In its 2005 NCP annual report, Victoria detailed new CN complaints against:

- the City of Greater Geelong, in relation to a proposal to allocate funds to upgrade a livestock exchange. The VCEC investigated the complaint which was resolved with no action required.

- the Rural City of Wangaratta, in relation to the pricing of a successful tender bid prepared by the council for the provision of local government enforcement services. The VCEC has commenced an investigation.

- the Moyne Shire Council, in relation to the pricing of a successful tender bid by the council for the provision of road construction services. The VCEC has commenced an investigation.

Queensland

The Queensland Competition Authority (QCA) and the Queensland Treasury are responsible for the administration of CN in Queensland. The Queensland Treasury investigates CN complaints made against significant government business activities on matters that are outside the QCA's jurisdiction. Local governments are required to have processes to deal with CN complaints about their business activities. They may, however, nominate the QCA as a referee for complaints against their significant business activities. In addition, the outcomes from the local government complaints process may be referred to the QCA.

In its 2005 NCP annual report, the Queensland Government reported that the QCA has not formally investigated any CN complaints since April 2004. The Queensland Treasury received several inquiries during 2004-05, with two resulting in CN complaints being lodged:

- Cooper Creek Wilderness, a commercial eco-tour operator on freehold land within a world heritage area, complained that the Queensland Parks and Wildlife Service's partial cost recovery from commercial operators, but not from independent travellers, places its business at a competitive disadvantage. The Queensland Government contends that the matter will not be addressed through the CN complaints process, because Queensland Parks and Wildlife Service is not a business activity.

- Pavement Management Services alleged that the Department of Main Roads selected ARRB Transport Research Limited, a successful applicant in a tender to develop road condition evaluation training across Queensland, on the basis of its government ownership. Treasury concluded the tender process did not breach CN principles in this case, but recommended that the Department of Main Roads improve its communication strategies. The department subsequently confirmed that it had 'revamped' its CN policies, procedures and compliance manuals, and improved its awareness and compliance programs.

Western Australia

Western Australia's complaints handling process involves complainants initially making contact with the agency alleged not to be complying with CN

to discuss and, if possible, resolve the matter. If resolution cannot be reached, complainants can lodge a complaint with the complaints secretariat located within the Department of Treasury and Finance. Where the secretariat assesses a complaint warrants further investigation, it carries out the investigation and reports its finding to the government's Expenditure Review Committee.

In its 2005 NCP annual report, Western Australia advised that two formal CN complaints were received:

- In November 2004, a tourism wholesaler complained about the WA Visitor's Centre and the WA Tourism Network activities of Tourism Western Australia. The complainant alleged that the booking prices charged to tourism operators by the Visitor's Centre fail to recover costs and that the full costs of operating the Tourism Network are not reported by Tourism Western Australia, such that that Tourism Network competes unfairly with commercial booking agents. The allegation against the Visitor's Centre was deemed invalid, because a 2001 CN review found that the cost of implementing CN for the Visitor's Centre outweighed the benefits. The allegation against the Tourism Network was deemed worthy of investigation because the 2001 CN review found that full cost recovery principles should apply. In May 2005, the government authorised an investigation (in progress) into the Tourism Network's compliance with CN.

- In February 2005, a private waste disposal operator complained that its septage waste disposal site was unable to compete with a similar disposal business operated as a joint venture between the Water Corporation and the City of Albany. The complainant alleged that the joint venture's charges were insufficient to cover costs. The Water Corporation is subject to CN, so its involvement in the joint venture should be on a competitively neutral basis. Accordingly, in May 2005 the Government authorised an investigation (in progress) into the corporation's compliance with CN. In relation to the City of Albany, its share of the joint venture's annual income would need to exceed $500 000 for it to be regarded as a significant business activity. If this test is satisfied, the benefits and costs of applying CN to the city's involvement in the joint venture would need to be assessed. The City of Albany would be responsible for carrying out this review.

South Australia

South Australia appoints competition commissioners who can be assigned to investigate CN complaints. The Department of Premier and Cabinet provides a secretariat for the complaints mechanism. On receipt of a written complaint, the secretariat first refers the matter to the relevant state or local government agency for investigation, response and possible resolution. Where the complaint cannot be satisfactorily resolved, the secretariat considers assigning it to the competition commissioner.

The South Australian Government reported that no new CN complaints were received in 2004. A complaint lodged in 2003 against the Adelaide Festival Centre Trust was referred to the competition commissioner in July 2004. The commissioner's investigation is underway.

Tasmania

The Tasmanian Government Prices and Oversight Commission is responsible for the complaints process. It considers complaints after the complainant has discussed the alleged contravention of CN policy with the government body against which the complaint is made. The commission reports to the Treasurer and the relevant portfolio minister. Where a complaint concerns a government business activity that is not subject to the CN principles, the commission considers whether failure to apply the principles to that business activity has adversely affected the complainant.

The Tasmanian Government reported that the Government Prices and Oversight Commission did not receive any CN complaints in 2004.

The ACT

The Independent Competition and Regulatory Commission is the responsible authority in the ACT for investigating CN complaints. In its 2005 NCP annual report, the ACT Government noted that the commission did not investigate any CN complaints in the twelve month ending 31 December 2004.

The Northern Territory

The Northern Territory Treasury handles CN complaints. The decision to not establish a specialist complaints mechanism reflects the government's view that the cost of such an undertaking would outweigh the benefits, given the territory's relatively small population.

In its 2005 NCP annual report, the Northern Territory Government noted that the Northern Territory Treasury did not receive any CN complaints in the 12 months to 31 March 2005.

Financial performance outcomes

To fulfil the CN principle that government business enterprises should not enjoy any net competitive advantage simply as a result of their public sector

ownership, governments must demand from their businesses a level of financial performance that is similar to that of privately owned businesses with comparable risk profiles. Continuing past analytical work, the Productivity Commission monitored the financial performance, from 1999-2000 to 2003-04, of 83 government business enterprises (which the commission calls government trading enterprises—GTEs) that controlled $174 billion of assets in 2003-04 and generated $55 billion in revenue (PC 2005b).

The commission observed a pronounced improvement in the financial performance of GTEs from the early 1980s. Nevertheless, in 2003-04, over half of the GTEs monitored recorded rates of return below the risk-free rate.[1] An even greater number failed to earn a commercial rate of return (a return that includes a margin sufficient to compensate for risk).

Looking at industry sectors, the commission found that the financial performance of the electricity, ports, water and urban transport sectors improved in 2003-04, while the results for the forestry and rail sectors were lower than in 2002-03 (table 2.1).

Table 2.1: GTE return on assets by industry sector

Sector (per cent)	*2003-04*	*2002-03*
Electricity	7.8	7.0
Water	4.8	4.6
Urban transport	0.7	0.1
Railways	–10.5	1.4
Ports	7.2	4.8
Forestry	1.8	7.0

Source: PC 2005b.

The Council has re-analysed the return on assets data collected by the commission by jurisdiction. Care must be exercised in interpreting the results owing to important differences in the industry composition of jurisdictional portfolios. Nevertheless, the GTE portfolios of four of nine jurisdictions provided returns above the risk-free rate (the Australian Government, Queensland, Western Australia and the Northern Territory) which was one less jurisdiction than in the previous year. Only one GTE portfolio (owned by the Australian Government) earned a return that could be confidently regarded as commercially satisfactory (table 2.2). The GTE portfolios of three jurisdictions—New South Wales, South Australia and Tasmania—earned aggregate returns significantly below the risk-free rate in both 2002-03 and 2003-04.

[1] Estimated by the Productivity Commission as 5.7 per cent in 2003-04, based on the average rate of return on 10-year Australian Government bonds.

Table 2.2: GTE return on assets, by jurisdiction, weighted by size

Jurisdiction (per cent)	*2003-04*	*2002-03*
Australian Government	19.6	15.4
New South Wales	1.8	2.7
Victoria	5.1	6.0
Queensland	5.8	6.0
Western Australia	7.4	7.1
South Australia	5.0	5.2
Tasmania	4.7	4.4
Northern Territory	6.2	2.9
ACT	4.2	6.2

Source: National Competition Council analysis of data from PC 2005b.

Forestry businesses

The Council has taken a specific interest in the performance of government forestry businesses, owing to longstanding community concerns that timber harvested by these businesses may be underpriced. According to the Productivity Commission, monitored government forestry businesses earned a 1.8 per cent aggregate return on their assets in 2003-04, down from 6.7 per cent in 2002-03 (table 5.1). As the commission noted, the profitability of forestry businesses can vary dramatically from year to year, recognising movements in the market value of standing forests, which flow predominantly from changes in demand for timber products. For performance monitoring purposes, annual rates of return need to be assessed in the context of longer term trends and other relevant information. The results reported by the commission (table 2.3) illustrate this volatility—particularly for DPI Forestry, which suffered a much smaller forest revaluation gain in 2003-04 than in earlier years. Only one business—ForestrySA—showed a return above the risk-free rate in 2003-04, down from three businesses in 2002-03.

Two businesses—State Forests of NSW and Forestry Tasmania—produced returns consistently below the risk-free rate over the period 2001-02 to 2003-04. The Council's 2004 NCP assessment report provides explanations by the respective governments. In the case of State Forests of NSW, the low returns reflected:

- heavy investment in expanding its plantation estate over the past 10–20 years, which has significantly expanded its asset base and the annual costs of protecting and enhancing growth stock

- the available cut exceeding processing capacity, weakening State Forests' bargaining power.

The government expects State Forests' profitability to improve over the next 10 to 15 years as plantations mature and are harvested and processing

capacity expands, lifting prices (Government of New South Wales 2004a). State Forests is funded for the provision of community service obligations such as recreational facilities and community fire protection.

Similarly, the Tasmanian Government argues that Forestry Tasmania's low returns reflect recent substantial investment in expanding its plantation estate, and that these returns will improve as these plantations mature. The enterprise is expected to meet or exceed its weighted average cost of capital on all new investments, but not on assets managed for non-commercial purposes, such as parkland (Forestry Tasmania 2003). Estimating the cost of managing non-commercial assets can be complicated as some relevant costs are jointly incurred with managing commercial assets. Nevertheless the Tasmanian Government's failure to fully fund community service obligations delivered by Forestry Tasmania obscures the underlying performance of the enterprise. This issue is likely to have contributed to persistent doubt in the community about the economic viability of the enterprise's investments and pricing.

Table 2.3: Forestry GTE return on assets

GTE (per cent)	*2003-04*	*2002-03*	*2001-02*
State Forests of NSW	2.2	0.5	2.4
DPI Forestry (Queensland)	–3.3	23.8	10.6
Forests Products Commission (Western Australia)	3.9	7.6	6.4
ForestrySA	6.1	6.8	4.6
Forestry Tasmania	3.2	–0.6	1.0

Source: PC 2005b.

Assessment

Governments' application of CN to major government business enterprises and other significant business activities is well advanced. In all jurisdictions, major government business enterprises have been corporatised, other significant businesses have been exposed to CN principles and complaints units established.

Governments are free to determine their agendas for implementing CN, so a divergence in approaches is not surprising. New South Wales applies CN principles to all government businesses unless a specific case is made that the costs of applying CN would exceed the benefits. Conversely, Western Australia has high threshold coverage criteria, such that some sectors/businesses are exempt unless a 'coverage review' determines that CN should apply—the complaints mechanism cannot act until the activity is deemed to be covered. In the state, for example, one private and one public radiotherapy service provider actively compete with each other. In 2002, the

private provider alleged that the public hospital's practice of bulk billing of private patients places the private provider at a competitive disadvantage (box 2.1). A coverage review may occur in 2006 and depending on the review outcome, a CN complaints investigation may arise. In other jurisdictions, this matter would have been resolved.

Some governments appear reluctant to apply CN principles to the commercial activities of universities. In this regard, however, Western Australia has been proactive: its universities have been subject to CN (including a complaints process) since the government endorsed a review of universities' business operations in 2003.

Governments' complaints mechanisms are generally operating satisfactorily but there is scope for improvement. In some jurisdictions, the relevant portfolio minister decides whether complaints should be heard, which may create adverse perceptions about the independence of the process. In some states, a complaint against a government businesses must, in the first instance, be made to that government business. While this requirement may be effective in achieving a relatively quick resolution of the compliant, it is questionable whether it should be mandatory. The need to initially seek resolution with the relevant government business may deter complainants who fear retribution—for example, businesses that compete for government tenders.

Box 2.1: Competitive neutrality coverage reviews

Western Australia does not require businesses operated by public hospitals to apply CN principles. The Council has raised this matter with the government on many occasions since mid-2002, when a private radiation oncology company advised the Council of its concerns about competing with the radiation oncology department of Perth's Sir Charles Gardiner public hospital (SCGH). The Western Australian Health Minister deferred any decision on this matter until a national inquiry into radiation oncology (the Baume inquiry) was completed. The findings of the Baume inquiry were released in September 2002, and an Australian Health Ministers conference endorsed the final report of the Radiation Oncology Jurisdictional Implementation Group made in response to the Baume report.

In mid-2004, officers from the Health Department, the Department of Treasury and Finance (DTF) and SCGH met to determine whether a CN review should be conducted. The Health Department contended that the service did not satisfy the criteria for a significant government business activity and, therefore, did not fall within the ambit of the state's CN policy. However, the DTF noted that the installation of new linear accelerators by July 2005 would increase the value of SCGH's asset base to approximately $10 million—the state's CN 'significance' threshold. The DTF and SCGH subsequently agreed that a CN review should be conducted in July 2005. In August 2004, the Health Minister committed to a CN review. However, the Health Department subsequently advised that the plan to install linear accelerators had been delayed to January 2006. Given that the CN review is contingent on this expansion, it too has been delayed.

The performance of government businesses has improved as CN has promoted a more dynamic culture through greater transparency and accountability. The adoption of CN principles, including the capacity for private businesses to compete with government businesses on an equal footing, has improved businesses' efficiency, encouraged better services and

more cost-reflective prices for goods and services, and resulted in a more efficient allocation and use of (private and public) resources.

Notwithstanding this progress, the Productivity Commission's performance monitoring of government trading enterprises reveals that most are not achieving fully commercial levels of financial performance. This shortfall could reflect a range of factors, including failure to ensure appropriate pricing, inefficient cost structures, uneconomic activities, over valued assets and/or unfunded community service obligations. Whatever the explanation, poor financial performance by GTEs indicates that the community could derive greater benefits if some resources were allocated to different uses. Governments generally met the explicitly stated obligations of CN several years ago, but realising the objective of CN still appears some way off, bringing into focus the CN obligations that are only implied.

In its latest research paper on GTEs, the Productivity Commission argued that governments, to achieve the objective of CN, must commit to improve the external governance arrangements for GTEs, by:

- clarifying the objectives of GTEs, ensuring a commercial focus is central, and fully funding any community service obligations
- making a clear distinction between external and internal governance, increasing the independence of GTE boards, and improving the transparency of the role of ministers
- strengthening accountability for performance, such as through making statements of corporate intent publicly available.

These matters are bundled within the CN obligation to adopt a corporatisation model, where appropriate and to the extent that the benefits exceed the costs.

The Council encourages governments to consider options for strengthening their corporatisation models, as well as accelerating investigation processes and any necessary remedial actions. After a decade's experience of different models across Australia, the Council urges governments to take the opportunity to search for and adopt only the very best practices for governance of business enterprises.

3 Structural reform of public monopolies

Protection of public monopolies from competition through regulation or other policies allows anticompetitive market structures to develop. Rectifying strategies include liberalising market access and ensuring public monopolies adhere to 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 can involve separating the (potentially) competitive elements from the monopoly elements.

Structural reform is important where a public monopoly is to be privatised. Privatisation without structural reform could result in a private monopoly supplanting the public monopoly, with few real gains and potentially considerable risks. Clause 4 of the Competition Principles Agreement (CPA) sets out obligations of governments that aim to reduce the risks of such adverse outcomes. Governments agreed to undertake the following before privatising a public monopoly or introducing competition to a sector supplied by a public monopoly:

- relocate regulatory functions away from the public monopoly to prevent it from enjoying a regulatory advantage over (potential) competitors—CPA clause 4(2)
- undertake a review accounting for
  - the appropriate commercial objectives of the public monopoly
  - the merits of separating potentially competitive elements from the natural monopoly elements
  - the best way to separate regulatory functions from a monopoly's commercial functions
  - the most effective way of implementing competitive neutrality
  - the merits of any community service obligations (CSOs) provided by the public monopoly, and the best means of funding and delivering those CSOs
  - 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—CPA clause 4(3).

In its National Competition Policy (NCP) assessments, the National Competition Council has considered each jurisdiction's compliance with its CPA clause 4 obligations. Western Power (Western Australian Government) and AWB Limited and Telstra (Australian Government) were previously assessed as not complying with these obligations. Developments in these areas in 2005 are discussed below.

Western Power

In the 2003 NCP assessment, the Council reported that the Western Australian Government had endorsed the recommendations of the Electricity Reform Task Force, including the following relating to the state's CPA clause 4 obligations:

- the vertical disaggregation of Western Power into generation, network 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.

At the time of the Council's 2004 NCP assessment, Western Australia's *Electricity Industry Act 2004* had implemented several task force reforms: it provided 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. An independent Economic Regulatory Authority commenced on 1 January 2004 to administer the electricity licensing regime. The establishment of the independent regulator is consistent with Western Australia's obligations under CPA clause 4(2).

However, the government had not disaggregated Western Power into generation, network, retail and regional entities. The Electricity Corporations Bill 2003, required to implement the disaggregation, was introduced in October 2003, but was withdrawn when it became evident that the Bill would not pass. The failure to implement this key reform meant for the 2004 NCP assessment that Western Australia was in breach of its CPA clause 4(3) obligation.

The government recently introduced the Electricity Corporations Bill 2005 into Parliament to split Western Power into four independent functional entities by 31 March 2006. On 22 September 2005, Western Australia passed the *Electricity Corporations Act 2005.*

The Council assesses that the Western Australian Government has met its CPA clause 4 obligations.

AWB Limited

Until 1999 the *Wheat Marketing Act 1989* prohibited the export of wheat by anyone other the Australian Wheat Board, a statutory authority, unless the board had given its consent.

In 1999 the board's commercial business and assets were transferred to a company, AWB Ltd, owned by wheat growers. The Act had been amended to reconstitute the board itself as the Wheat Export Authority (WEA) with the function of controlling the export of wheat. The WEA had also given the function of monitoring the performance of AWB Ltd's subsidiary, AWB International Ltd (AWBI), in relation to the export of wheat and reporting on the associated benefits to growers.

The WEA's power to control wheat exports was constrained however. The Act allowed AWBI to export wheat without the WEA's consent. Further, the WEA had to consult AWBI before consenting to the export of wheat by another party, and could not give such consent without the prior approval of AWBI, unless the wheat is exported in bags or containers.

In early 2000 the Australian Government commissioned an independent review of the amended Act under CPA clauses 4 and 5 (see also chapter 10). The review, released on 22 December 2000, found in relation to CPA clause 4 that the Act had not achieved a clear separation of the regulatory and commercial functions of the Australian Wheat Board and that the structure of the WEA board, set out in the Act to include two members nominated by the Grains Council of Australia, did not give the WEA sufficient independence. It recommended that the government amend the Act to:

- ensure the WEA is totally independent
- allow, for the three years until a further review already scheduled for 2004, the WEA to consent to the export of:
  - wheat in bags and containers without consulting AWBI
  - durum wheat without obtaining the AWBI's written approval.

The government responded in April 2001 by declining to amend the Act. The government 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 2003 and 2004 the Council assessed that the government had not met its CPA clause 4(3) obligation as it had not conducted a review before privatising the former Australian Wheat Board and, further, gave insufficient grounds for declining to implement the recommendations of the post-privatisation review conducted in 2000.

The Council has looked again at this matter and now accepts that the government did, prior to the privatisation of the former Australian Wheat Board, review relevant matters including the appropriate commercial objectives of AWBI, the ownership structure and the most effective means of separating regulatory functions from commercial functions, and that the government asked the 2000 NCP review to revisit some of these matters—particularly the separation of regulatory and commercial functions.

Following the 2000 NCP review the government has not reduced AWBI's role in the regulation of wheat exporting. This reflects the government's policy of allowing wheat exports by parties other than AWBI only where these complement those of AWBI, protecting AWBI from any significant direct competition in the export of wheat, in contrast to the recommendations of the 2000 NCP review that the government trial direct competition in certain areas of the wheat export trade. As noted in Chapter 10 the government has not shown this restriction on competition is in the public interest and therefore has not met its CPA clause 5 obligations.

The government has also not directly addressed the recommendation of the 2000 NCP review that it amend the Act to ensure the independence of WEA. With the continuation of the export monopoly, the monitoring of the performance of AWBI in exporting wheat for the benefit of growers is particularly important, and the independence is necessary for such monitoring to be effective. However, the government acknowledged concerns about the independence of the WEA when it removed responsibility for conducting the 2004 performance review from the WEA, assigning it to an independent panel, and widening the review to consider the performance of the WEA itself.

The implications for the Australian Government's compliance with its CPA obligations are that:

- the government continues to restrict competition in the export of wheat—a breach of CPA clause 5

- the obligations under CPA clauses 4(2) and 4(3) arise from the introduction of competition, which the government has not yet done in any significant way

- the government has privatised the monopoly—a trigger under CPA clause 4(3)—but there is no meaningful competition in exporting, so regulatory separation has no real role to protect competition.

The Council finds that the Australian Government has met its CPA clause 4 obligations arising from the privatisation of the former Australian Wheat Board, albeit that these obligations have been reduced by the government's determination to continue the restriction of competition in wheat exports (a breach of CPA clause 5).

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 (accounting separation). 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 concerns about the market power of Telstra.

Through the Productivity Commission's review and the subsequent legislative changes, the Australian Government has made efforts to meet its NCP obligations. Nevertheless, to have complied with its CPA obligations, the Government should have considered the structural separation of the network in a formal way. At the time of the 2004 NCP assessment therefore, the Council reaffirmed its finding that the Australian Government was in breach of its CPA clause 4 obligation.

In 2005, the Productivity Commission released its *Review of National Competition Policy reforms*. It stated that full vertical separation of Telstra's network and retail services would involve substantial transaction costs that 'tip the balance' against full separation. The commission concluded that:

> *The … discussion of structural separation options highlights the difficulties of 'unscrambling the structural egg' in the*

> *telecommunication sector. Significant vertical or horizontal separation options may have been feasible or desirable when the company was still in full public ownership or before new investment … However, partial privatisation and the impending full privatisation have significantly increased the likely costs and difficulty of major structural changes.* (PC 2005a, p. 246)

The commission recommended that the Australian Government bring forwards (from 2007) its scheduled review of telecommunications regulation before the sale of Telstra, with the terms of reference providing for an assessment of whether further *operational separation* of Telstra's wholesale and retail arms would yield net benefits (PC 2005a, p. 247).

In response, the Australian Government brought forward its review of telecommunications regulation which found that operational separation was warranted. In September 2005, the government introduced legislation (subsequently passed) for an operational separation framework imposed on Telstra through a licence condition in the *Telecommunications Act 1997*. Under the licence condition Telstra will develop an operational separation plan for approval by the minister (subject to matters set out in the legislation). If it becomes apparent that Telstra is not complying with its obligations under the licence condition, the minister will be able to direct Telstra to provide a rectification plan. If Telstra fails to comply with its obligations under the rectification plan, the Australian Competition and Consumer Commission or the Australian Communication and Media Authority may take enforcement action.

The Council has no evidence before it to question the validity of the Productivity Commission's recommendation for a review to consider the merits of operational separation rather than structural separation. However, it does not consider that the commission's analysis of this matter—which constituted one element of a broad ranging review on the impact of the NCP and candidates for a new reform agenda—is a substitute for the structural review called for under CPA clause 4.

The potential benefits of full vertical separation of Telstra's wholesale and retail arms might not be sufficiently large to override the efficiency and transaction costs that would be entailed. Nevertheless, the CPA clause 4 obligation is clear. To comply, the Australian Government needs to undertake a review that definitively establishes the potential costs and benefits of structural separation relative to less stringent structures such as operational separation. The Council thus assesses that the Australian Government has not met its CPA clause 4 obligations.

4 New legislation that restricts competition

Governments' obligations

Clause 5(1) of the Competition Principles Agreement (CPA)—the guiding principle—obliges governments to ensure legislation (box 4.1) 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 cannot otherwise be achieved. Complying with CPA clause 5 obliges a government to ensure:

- its stock of legislation satisfies the guiding principle—CPA clause 5(3) (discussed in chapters 9–19)
- all new legislation that restricts competition is consistent with the guiding principle—CPA clause 5(5)
- legislation that restricts competition in the public interest is reviewed at least once every 10 years to ensure it continues to meet the guiding principle—CPA clause 5(6).

Together, CPA clauses 5(3), 5(5) and 5(6) aim to ensure that no legislation—existing, new or continuing—unnecessarily restricts competition. It is important to recognise, however, that regulations that impede efficiency but which do not involve competition restrictions may never have been addressed under the NCP. Similarly, the National Competition Council has sometimes questioned the extent of compliance and administration ('red tape') and efficiency costs imposed to support competition restrictions found to be in the public interest. Where an excessive compliance burden has a non-discriminatory impact, the legislation may still meet the requirements of CPA clause 5.

An assessment of the public benefit of restricting competition to achieve governments' objectives should occur through rigorous examination before legislative proposals are developed. Most Organisation of Economic Cooperation and Development (OECD) nations have systems to improve regulatory quality. Generally, in Australia, where new legislation involves competition restrictions with nontrivial effects, a regulation impact assessment is triggered. The key tool is the regulation impact statement (RIS)—also referred to as a regulation impact assessment, a competition impact analysis or a public benefit test. A RIS is a document prepared by an agency

responsible for a regulatory proposal. It formalises the analysis of the impact of a regulation, including an assessment of the risks, costs and benefits, and a consideration of regulatory and nonregulatory alternatives.

Box 4.1: Primary, subordinate and quasi regulation

Forms of regulation include primary legislation (Acts of Parliament) and also subordinate or delegated legislation in the form of:

- disallowable instruments—Regulations, statutory rules, By-laws, Orders, Ordinances, instruments or Determinations made by an executive government according to the powers bestowed by an authorising Act of Parliament. Delegated legislation must be tabled in Parliament and can be disallowed (vetoed) by a motion agreed to by members in any house of Parliament. Delegated legislation is scrutinised by a review committee of the Parliament (such as the Senate Standing Committee on Regulations and Ordinances at the Commonwealth level).
- nondisallowable instruments—instruments that are not subject to parliamentary disallowance. They may be made by boards, agencies, statutory authorities or departments, and are gazetted and/or tabled. The Radiocommunications (Spectrum Licence Limits—2 GHz Band) Direction No. 2 of 2000, for example, imposed restrictions on some potential bidders for radiofrequency spectrum.

A further category is quasi regulation, which includes rules, instruments and standards that do not form part of explicit regulation. Examples of quasi regulation are industry codes of practice, guidance notes (such as a statement issued by the Australian Securities and Investments Commission concerning offers of securities made over the Internet), industry–government agreements and accreditation schemes.

In its 2003-04 report *Regulation and its review*, the Productivity Commission, drawing on the work of the Australian Government Office of Regulation Review, observed that:

> *The RIS process is recognised internationally as playing a pivotal role in improving the quality of regulation. RIS processes also reinforce other processes of government designed to improve the quality, transparency and administration of regulations. In 2003-04, RIS processes were strengthened in several jurisdictions. Nevertheless, some regulators continue to experience difficulties in complying with such best practice processes.* (PC 2004a, p. 1)

The integrity of the regulation impact assessment process is central to the capability of governments to meet their CPA clause 5(5) obligation. The process of ensuring governments develop effective and efficient regulation is referred to as 'gatekeeping'. The 'gatekeeper' is the entity with responsibility for ensuring the requisite processes are followed to prevent poor quality regulation.

Preserving the gains from reform

In 1996 around 1800 pieces of legislation were identified and scheduled for review under the National Competition Policy (NCP) legislation review

program. By June 2005, around 85 per cent of this legislation had been reviewed and, where appropriate, reformed (see chapters 9–19).

The review program required a substantial commitment by governments and has been pivotal in removing barriers to competition across activities as diverse as the professions and occupations; agriculture, forestry and fishing; retail trade; transport; planning and construction; and communications. The outcome has been a material reduction in unwarranted regulatory restrictions. Major reforms have been introduced in tandem with a systematic transformation of a multitude of smaller productivity-detracting regulations. While major reforms often deliver more apparent community benefits, the cumulative effect of all reforms has greatly contributed to Australia's enviable economic performance over the past decade, with the myriad of smaller reforms akin to stripping the excess kilos from an athlete.

Preserving these hard-won gains necessitates having mechanisms to lock in the benefits from removing competition restrictions shown not to be in the public interest. The impending conclusion of the legislation review program should not be an opportunity to revert to discredited regulatory approaches.

It is against this backdrop that CPA clause 5(5) provides the community with an assurance that:

- unwarranted anticompetitive restrictions will not resurface in new legislation ('backsliding' on completed reforms)

- new legislation is tested to ensure restrictions on competition are in the public interest and that objectives cannot be otherwise achieved.

Preventing 'backsliding'

In April 2004, the Australian Government directed the Productivity Commission to review the NCP and report on future areas 'offering opportunities for significant gains to the Australian economy from removing impediments to efficiency and enhancing competition'. In undertaking this task, the commission identified the importance of locking in the gains achieved to date:

> *Just as Australia cannot afford to forgo opportunities for further competition related and other reform, so too must it avoid backsliding on the many beneficial reforms undertaken over the last two decades, or those that are still in the process of being implemented. For example, any unwinding of competition policy would increase costs, undermine incentives for future productivity improvement and reduce the flexibility and adaptability of the economy to changing circumstances. The ensuing reduction in Australia's competitiveness relative to countries that are continuing to improve, would in turn detract from our future standard of living.*

> *Moreover, backsliding would send an unfortunate signal about the commitment of governments to resisting pressure from sectional interest groups. Hence, mechanisms that can help to lock in the gains of previous competition related and other reforms should be a central component of the procedural framework attaching to any future reform agenda.* (PC 2005a, p. 172)

The Council concurs that pressure from lobby groups to reverse agreed reforms to promote their interests over the public interest is a cause of backsliding. Even with the discipline of the NCP and the associated competition payments, governments have been subjected to intense pressure to block or moderate reform proposals derived from rigorous and independent analysis (box 4.2).

Box 4.2: The influence of the Pharmacy Guild of Australia on pharmacy reforms

In 1999, the Council of Australian Governments (COAG) commissioned a national review of pharmacy regulations and a subsequent working group to consider the review's recommendations. The COAG endorsed outcome of this process included recommendations that governments lift restrictions on the number of pharmacies that a pharmacist can own and remove provisions that discriminate against friendly societies operating pharmacies. The Australian Government affirmed its commitment to the COAG outcomes in its Third Community Pharmacy Agreement with the Pharmacy Guild of Australia. The agreement noted that '*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). However, no jurisdiction has implemented the COAG pharmacy reforms.

In 2004, New South Wales introduced a Bill to reform regulation consistent with the national review outcomes. In response, the Pharmacy Guild mounted a strident campaign to block reform. The Australian Government subsequently advised New South Wales along with other jurisdictions that intended to make compliant reforms, that the COAG outcomes could be diluted. This resulted in the retention of competition restrictions with no parallel in other professions and for which no public interest justification was established.

A further consequence was the imposition of new restrictions in the ACT and the Northern Territory. For example, previously, the Northern Territory did not cap the number of pharmacies that a pharmacist could own, or prohibit ownership by persons other than pharmacists. In 2004, however, the Territory indicated that it would introduce ownership restrictions for pharmacies, such that friendly societies would be permitted only where deemed by the Minister to meet the needs of the community. The Council requested the territory to demonstrate the public benefit from such action. Accordingly, the territory conducted an independent review of its proposal. Following advice from the Prime Minister that no penalty would attach to the introduction of the new restrictions, the territory advised that its review would not be made public. The new restrictions commenced in February 2005.

In its 2004 NCP assessment, the Council stated that failure to implement the modest reforms of the COAG review meant it was time for another rigorous review of pharmacy. The Productivity Commission endorsed this view (PC 2005a, p. 265).

New legislation

A recent report by the Business Council of Australia estimated that the stock of legislation across Australia is growing at around 10 per cent each year

(BCA 2005). The Business Council found that Australian Parliaments added 33 000 pages of new laws and regulations in 2003.

In a recent speech, the Productivity Commission's Chairman observed that 'Australia has at least five or six hundred regulatory bodies'. For Commonwealth legislation, he noted that:

> *With respect to statutory rules and disallowable instruments …the most recent information available indicates that over 7000 such regulations were made in the five years to 2001-02. Beyond this is much regulatory activity that doesn't get seen by Parliament at all. As a rule of thumb, all of this could be multiplied eight times to account for state and territory regulations.* (Banks 2005, pp. 6–7)

The volume of new legislation indicates the potential for new restrictions on competition (and for excessive red tape) to be introduced. It is vital, therefore, that new legislative proposals are tested appropriately. Regulation that promotes the interests of the wider community lays the foundation for an internationally competitive economy. Legislation that primarily serves the interests of certain groups, industries and occupations—whether intentionally or because it is ill-conceived or not rigorously assessed—can impose a net cost on the community as a whole.

These potential costs of anticompetitive restrictions underscore the need for vigorous scrutiny of new legislation. As the Productivity Commission stated:

> *Independent and transparent review and assessment processes are critical to secure good outcomes, especially on contentious issues; prevent backsliding; and promote public understanding of the justification for reform.* (PC 2005a, p. xxv)

The experience with the legislation review program demonstrates the imperative for strong gatekeeping mechanisms to act as a countervailing force against the reticence of governments to implement contentious reforms where this could alienate an important constituency. The New South Wales Government, for example, acknowledged this year that it did not release independent review reports of its poultry industry regulation because to do so would have made clear that the legislation is not in the public interest. The government preferred to perpetuate restrictions on competition in full knowledge that the legislation is not in the public interest (box 4.3).

In addition to the power of vested interests and voter coalitions, overly expeditious policy making too can create pressure to pursue regulation with unanticipated costs. The Council noted in its 2003 NCP assessment the haste with which state governments regulated, without considered review, legal professional advertising to address a perceived insurance crisis. At the Commonwealth level, compliance with gatekeeping requirements has been weakest for proposals that are politically sensitive and/or urgent. According to Banks (2005), urgency encourages ministers and departments to circumvent RIS processes for precisely the type of regulation that requires detailed consideration.

A further factor that can lead to regulation that is not in the public interest is its potential off-budget capability. Regulation can provide a 'cheap' means to achieve policy objectives. The Council has had to engage with governments about regulatory proposals designed to engineer cross-subsidies between certain groups rather than meet community service obligations through transparent budget funded programs. Similarly, the Productivity Commission found that regulations in relation to native vegetation forced farmers to bear the costs of providing public benefits (PC 2004b).

Box 4.3: Withholding reforms shown to be in the public interest

The Poultry Meat Industry Act in New South Wales' restricts competition between processors and growers by setting base rates for growing fees and by prohibiting agreements not approved by an industry committee. At the time of the 2003 NCP assessment, the government failed to show that these restrictions were in the public interest and had not conducted 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 submitted the legislation for review. It was agreed, if the government initiated an independent NCP review of the poultry legislation, that the Council would recommend a suspension of competition payments for 2004-05, rather than another permanent deduction. And, on the government's implementation of NCP compliant reforms, the Council would recommend lifting the suspension.

As agreed, the government commissioned an independent review of the Act, and the Council recommended a specific suspension of 5 per cent of the state's 2004-05 competition payments. Based on the recommendations of the NCP review, on 7 June 2005 the government announced reforms to remove the restrictions on competition and to improve the operation of the Act. In introducing the amendments, which had broad support among growers and processors, the minister outlined the history of the government's strategy to block reforms. The minister stated:

In 1999 a joint industry government review was conducted, and in 2001 Hassall's conducted an independent review. Both reviews failed to support the current Act …

… both the 1999 and 2001 reviews found a net public detriment with this Act. If that had been revealed publicly at that stage, the Commonwealth would have moved on us two to three years earlier.

… The government did not release the results of the reviews because it was protecting the growers from the actions of the National Competition Council.

… we were given the chance to conduct a third review …

…the 2004 review, which has just been completed, confirmed the earlier findings.

… We kept the Act in place since 1999 because we were interested in protecting the interests of growers. The New South Wales Government has protected those growers for six years longer than the initial review. (Macdonald 2005).

The Council's approach

Under CPA clause 5(5), each jurisdiction must demonstrate that new legislative proposals restricting competition are consistent with clause 5(1).

The Council has always interpreted this to mean that governments should have robust regulatory gatekeeping arrangements in place. It considers that 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 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.

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

- There should be monitoring and annual reporting by the independent body on compliance with the regulation impact analysis requirements.

Where the Council is not assured about the effectiveness of a jurisdiction's gatekeeping process, it has examined, on occasion, some new legislation that restricts competition. This 'sampling', based on an assumption that the quality of regulation is a function of the efficacy of the gatekeeping process, provides a check on the integrity of the latter.

The New South Wales Government stated in its 2005 NCP annual report that:

> … *the NCC* [the Council] *has formed its own view of what constitutes a set of 'best practice' principles for gatekeeping. Notwithstanding this, the Competition Principles Agreement does not prescribe any particular model, nor does it provide for the NCC to determine such a model.*
>
> … *the NCC has indicated that it may undertake its own checks of compliance by examining whether particular pieces of new legislation meet the clause 5(1) guiding principle. Clause 5(10) of the CPA requires jurisdictions to report on progress towards achieving the legislation review and reform agenda at clause 5(3), and does not require jurisdictions to report against the gatekeeping obligations at clause 5(5).* (Government of New South Wales 2005a, pp. 30–1)

It is the case that the CPA clause 5(10)—the reporting requirement for the review and reform of extant legislation—does not include a formal direction to report on compliance with clause 5(5). It is also the case that the CPA does not charge the Council with specifying best practice gatekeeping models. However, in determining competition payment recommendations, the Council is obliged under the Agreement to Implement the 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', which includes compliance with clause 5(5).

In assessing compliance with clause 5(5), the Council does not seek to interpose itself as a further layer to scrutinise every piece of new legislation. CPA clause 5(5) was never intended to cast the Council as another layer of gatekeeping. Rather, the Council's primary focus is to ensure jurisdictions have their own rigorous gatekeeping mechanisms in place and that they apply those mechanisms systematically.

In the context of being an assessor, the Council is in a unique position to monitor the different gatekeeper models. But, rather than seeking to use competition payments as a lever to impose a tops down model on governments, the Council has sought to inform governments on the best practice features of widely divergent approaches adopted across Australia.

Assessment of gatekeeping

In its 2003 and 2004 NCP assessments, the Council requested from governments details on the key elements, operations and institutional underpinnings of their gatekeeping mechanisms (NCC 2004, chapter 4). In particular, it sought to be satisfied that each government had, at a minimum, a formal process for the regulatory impact assessment of new and amended primary legislation and for subordinate legislation.[1]

Tables 4.1 and 4.2 (at the end of this chapter) give two perspectives on government's gatekeeping mechanisms. Table 4.1 encapsulates the Productivity Commission's comparison of jurisdictions' regulation impact assessment requirements and processes. Table 4.2 provides a snapshot of the Council's assessment of gatekeeping mechanisms. The commission's work details each government's RIS 'machinery', whereas the Council's focus extends to gauging the potential effectiveness of that 'machinery' in ensuring new legislation does not introduce unwarranted restrictions on competition.

Both analyses indicate that all governments have arrangements to examine regulatory proposals with nontrivial effects on competition and that each, to varying degrees, embodies the necessary attributes for effective gatekeeping. Although both approaches identify areas in which governments could improve their processes, the Council nevertheless determined in its 2004 NCP assessment that all jurisdictions had gatekeeping mechanisms that could, *in principle*, operate to ensure compliance with the CPA clause 5(5) obligation.

[1] The Council of Australian Governments (COAG) RIS requirements apply to national standard setting and regulatory action by ministerial Councils and standard setting bodies. The Office of Regulation Review's report on these COAG processes is discussed in chapter 5 and reproduced in full at appendix A.

That said, the Council expressed reservations about whether all gatekeeping processes were delivering appropriate outcomes *in practice*.

Having a gatekeeping model with the requisite processes and mechanisms does not, of itself, ensure *outcomes* consistent with the public interest. Rather, good regulation is a function of the overarching commitment shown by the government and of the practices, conventions and relationships between that government, its gatekeeper and the agencies devising regulation. A gatekeeper that is not sufficiently independent of the executive arm of government, for example, is less likely to provide relatively unconstrained independent advice on the adequacy of regulation impact analyses.

In this 2005 NCP assessment, the Council has not revisited the detail of each government's gatekeeping mechanism. Instead, given that this assessment is the final under the current suite of NCP agreements, the Council has sought to encourage governments to move beyond a static notion of adequate or NCP compliant gatekeeping, to a more dynamic approach that strives to adopt improved practices. In Australia, there is no fixed template for an optimal gatekeeping process: different governments have adopted different formats and this diversity of experience provides significant potential for governments to adopt better practices based on the experience of others.

The following sections discuss different approaches to two critical aspects of effective gatekeeping: (1) the independence and form of the gatekeeper; and (2) the transparency of its processes.

Independence and form of the gatekeeper

The most important determinant of effective gatekeeping is the independence (location) of the gatekeeper and its institutional underpinning. The Council's 2003 NCP assessment considered that the gatekeeping arrangements of the Australian Government represented best practice, which was primarily a function of the gatekeeper's independence. Recently, Victoria established the Victorian Competition and Efficiency Commission (VCEC) as an independent statutory gatekeeper (box 4.4)[2]. The VCEC also has responsibility for competitive neutrality policy matters and undertakes government initiated regulatory inquiries.[3]

Victoria's proactive role in this area demonstrates a strong commitment by the government to strive for high quality regulation. The re-specification of the benchmark for regulatory assessment will enshrine the gains from competition policy to date and encourage informed and high quality new legislation. The ability of the VCEC to withhold certificates of adequacy for

[2] Strictly speaking, the VCEC was established by an Order in Council that provides for a limited statutory form. However, VCEC has independent commissioners, and the protocol between the VCEC chair and the Department of Treasury and Finance specifies the former's independence.

[3] South Australia also co-locates its competitive neutrality and gatekeeping functions.

RISs provides a discipline that proposals for new laws will be properly assessed. This is a more potent requirement than relying on diffuse guidelines, circulars and memoranda. The introduction of a comprehensive competition impact analysis regime in the Northern Territory in 2003 further exemplifies the prospect for advances in regulation review.

Box 4.4: Gatekeeping and the Victorian Competition and Efficiency Commission

In Victoria, a formal assessment to determine whether the CPA clause 5(1) guiding principle has been satisfied must be undertaken for all new and amended primary legislative proposals and for subordinate legislation for which a regulatory impact statement (RIS) is required.

For primary legislative proposals that potentially have significant effects for business and/or competition, the CPA clause 5(1) test is incorporated within a business impact assessment (BIA). Primary legislative proposals that are not considered to have potentially significant effects are exempt from the BIA process, but the CPA clause 5(1) assessment must still be undertaken. For subordinate legislation, a RIS is required for new or amended regulatory proposals, except proposals that will not impose an appreciable burden on any sector, that have been assessed already for a national uniform legislation scheme or that are of a fundamentally declaratory or machinery nature.

Ministers are required to seek an independent assessment of the adequacy of RISs from the Victorian Competition and Efficiency Commission (VCEC). For primary legislation, the VCEC is also required to advise on the adequacy of BIAs. For subordinate legislation, RISs are prepared in accordance with guidelines issued by the Department of Premier and Cabinet.

Guidance material is available to all government agencies in the form of a single publication known as the *Victorian guide to regulation*. The guide:

- describes forms of regulation and regulatory alternatives, and the circumstances under which governments should consider intervening in the market
- outlines processes to ensure appropriate scrutiny of regulatory proposals, and when a BIA or RIS should be prepared
- provides a step-by-step outline on the information and issues that need to be addressed in BIA and RIS documents.

The VCEC's secretariat is drawn from the Department of Treasury and Finance. Importantly, a protocol between the secretary of the department and the chair of the VCEC ensures the independence of the secretariat's advice. The VCEC assesses each BIA and RIS, and provides a certificate of adequacy only when the analysis is of the required standard. For primary legislation, the VCEC certificate must be provided to Cabinet or the Cabinet committee that is considering the legislation. For subordinate legislation, the RIS must not be released for comment until the responsible minister has received independent advice from the VCEC regarding the adequacy of the RIS.

The VCEC reports annually to the Treasurer on the nature and extent of compliance with policies in relation to RISs and BIAs. This report is public. The VCEC also provides ongoing advice and training to government agencies on the preparation of RISs and BIAs. Parties are encouraged to consult with the VCEC in the early stages of the RIS/BIA process.

A further layer of scrutiny exists after regulations have been introduced. The all-parliamentary Scrutiny of Acts and Regulations Committee must be supplied with copies of the RIS, the regulations, all public comments received during the consultation period, and the relevant department/agency's response to the main issues raised in the public comments. The committee reviews the regulations and their conformity with the processes for regulation making specified in the *Subordinate Legislation Act 1994*.

Victoria and the Australian Government are the only two jurisdictions with independent statutory gatekeepers. Other jurisdictions locate their gatekeepers within their Treasury or Department of Premier and Cabinet/Chief Minister. During the recent Productivity Commission review of the NCP, governments expressed different views about the form and location of their gatekeepers. For example, the Queensland Government stated that:

> … *jurisdictions should be free to determine their own arrangements for monitoring new and amended legislation, including whether some form of 'independent' agency is warranted.* (PC 2005a, p. 256)

Conversely, the Western Australian Department of Treasury and Finance, acknowledged that:

> *Perhaps jurisdictions that do not have a sufficiently robust gate-keeping mechanism in place should work towards establishing independent bodies with relevant expertise to advise agencies on when and how to conduct regulatory impact assessments.* (PC 2005a, p. 257)

Some smaller jurisdictions, such as the Northern Territory contend that the resource cost of a stand alone gatekeeper would not be justifiable.

Given that the independent statutory form of gatekeeper is the 'gold standard', the contention that the resource cost is not justified should be further debated. The benefits to a state or territory that flow from good regulatory practice and integrated policy making (and from avoiding bad regulation) are substantial. For small jurisdictions, a second-best option could be to locate the gatekeeper function as a discrete unit within an existing independent entity such as the audit office or the prices oversight body.

Without an independent statutory gatekeeper, or one located within an independent entity, it would be preferable to house the function within agencies that are:

- removed, to the greatest extent possible, from the politics of policy development
- culturally attuned to a broad (economy- or statewide) perspective of the net public benefit.

In practical terms, these criteria suggest locating the gatekeeper within treasury departments.

Two key requirements for a non-statutory gatekeeper models are:

- *an effective 'Chinese wall'*—political considerations must be kept separate from the robust assessment of the costs and benefits of regulation, and RISs prepared within the same portfolio agency must be assessed without undue influence
- *'potency' and appropriate resources*—the gatekeeper needs to have sufficient resources to undertake its functions effectively, and it should be

headed by a senior official with direct reporting to the head of the agency in which it is housed and ultimately to a senior Minister (such as a Treasurer).

Finally, effective gatekeeping needs legislative underpinning. In many jurisdictions, subordinate legislation Acts dictate processes for the making of (subordinate) regulations. Processes for assessing new legislation, however, are typically less formalised and thus, less effective.

The location of the gatekeeper has a strong bearing on its independence and its capacity to properly undertake regulatory impact analysis. That said, if the gatekeeper is permitted to operate as a fully independent entity, supported by a strong institutional framework and afforded some 'muscle', it could conceivably operate effectively even within a policy department. The Council found, for example, that South Australia's gatekeeping arrangements, administered through the Department of Premier and Cabinet, appear to operate effectively in vetting proposed new legislation for competition impacts.[4] On the other hand, the Council has expressed reservations about New South Wales' gatekeeping arrangements (NCC 2004, p. 4.7)—see also table 4.1 (below) drawn from the work of the productivity Commission.

Transparency of gatekeeping processes

Effective gatekeeping requires transparent processes at a number of stages in policy development—for example, some governments adopt approaches such as consultation (or draft) RISs in addition to RISs for the decision maker. Generally, to the extent that RISs are undertaken for subordinate legislation, they are publicly accessible. But, this is not always the case for new legislation proposals. Victoria's business impact assessments for new legislation remain confidential. The ACT also retains Cabinet confidentiality for its RISs. In contrast, the overwhelming majority of Australian Government RISs for primary legislation are published *ex post*.

Where regulatory assessments are not made public, affected stakeholders may have no way of determining the basis on which decisions were made. In these instances, exposure drafts for new legislation can be a useful adjunct to encourage early alerts to potentially unanticipated consequences.

The view that Cabinet confidentiality must be preserved is not without merit. However, for contentious new legislation, it should be possible to make expurgated RISs available. While it is not the role of a gatekeeper to impede the policy initiatives of elected governments, it is in the public interest to have transparent RISs that make public the reasons that governments

[4] On occasion, the South Australian Government has sought the Council's advice on whether proposed new legislation would comply with CPA clause 5(5).

pursue one course of action over others. Such transparency can highlight the trade offs made and make governments more accountable for their decisions.

The Council considers that a central repository of RISs would be a valuable resource for interested parties and public policy practitioners. If this practice were widespread, it would allow policy makers (and others) to compare and contrast regulatory approaches, and their rationales, around the country. Moreover, a public repository of RISs would facilitate *ex post* evaluation and expose whether estimated costs and benefits were as anticipated. Such scrutiny would provide a further incentive for robust analysis.

Improvements needed across the board

The gatekeeper arrangements operated by the Australian and Victorian governments encapsulate effective processes; but scope for improvement remains even in these jurisdictions. Quasi regulation is not subject to impact assessment in Victoria (not an NCP requirement), for example and the business impact assessments for new legislation are not made public. In relation to the Australian Government's gatekeeping processes, the Productivity Commission has identified areas for improvement, including:

- greater transparency in the making and administration of regulations
- better integration of RIS processes into agency regulatory policy development processes
- the provision of better quality information on compliance costs and administrative burdens associated with options considered in RISs
- greater attention to effective implementation of regulations and ensuring greater accountability of regulatory decision makers (PC 2005a, p. 259).

The commission's proposals are equally applicable to state and territory gatekeeping arrangements.

The Council considers that the following areas also offer scope for systemic improvement:

- *Coverage*: Regulatory proposals for both primary and subordinate legislation need to be rigorously assessed. In New South Wales, it appears that the RIS process can be avoided for direct amendments to subordinate legislation. More generally, quasi regulation is generally not covered except by Tasmania and the Australian Government. (The Australian Government also requires assessments of regulatory proposals arising from international treaties.)
- *Sunset clauses*: New legislation should contain a sunset clause to ensure it is reassessed. Sunset clauses are consistent with the CPA clause 5(6)

obligation and would also facilitate re-examination of RISs, including how well they were prepared.

- *Sanctions*: At the Australian Government level, there is little sanction for a failure to comply with gatekeeping processes, other than the opprobrium arising from exposure via reporting by the Office of Regulation Review. Under the VCEC model, if a RIS is not assessed as adequate this must create some concerns for Cabinet. A more stringent option would be to preclude regulatory proposals from proceeding without an adequately certified RIS.

The above considerations are broad brush systemic matters. It is not the Council's role to comment on the detail of how regulatory impact assessments should be conducted at the agency level. That said, RISs should include a defensible quantification of costs and benefits, rather than unsubstantiated qualitative statements such as 'the costs are negligible'.

A way forward

In its recent review of the NCP, the Productivity Commission reaffirmed the need for high quality gatekeeping of new legislation and recommended that:

> *All Australian governments should ensure that they have in place effective and independent arrangements for monitoring new and amended legislation.*
>
> *Governments should also consider widening the range of regulations encompassed by gate keeping arrangements and strengthen national monitoring of the procedures in place in each jurisdiction and the outcomes delivered* (PC 2005a, recommendation 9.2, p. 259).

The Council agrees that national monitoring of gatekeeping arrangements will help to buttress improved processes. In any initial phase of systemic improvement, national monitoring would be important for success. Ultimately, however, individual governments need to commit to upgrade gatekeeping mechanisms.

The Council urges governments to ensure good policymaking is promoted through effective scrutiny of their agencies' performance in developing regulations. Such scrutiny should be undertaken by gatekeepers that are sufficiently independent to genuinely assess the quality of proposed new regulations and whether the new laws will be in the public interest. Having processes, procedures, guidelines and mechanisms in place will not ensure regulatory quality if the gatekeeper perceives its role as uncritically shepherding through regulatory proposals because they reflect the desire of the government of the day. While politics may drive policy formulation, the gatekeeper should be effective in ensuring the result is high quality

regulation that meets the objectives of governments without unnecessarily restricting competition or otherwise generating avoidable efficiency costs.

Fundamental systemic reform to ensure the promulgation of high quality regulation will require high level endorsement by Australian governments. There have been positive developments in this regard at the collective COAG level. The Office of Regulation Review reported that several changes have been made to 'enhance the application of the principles of good regulatory practice by COAG, ministerial councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory issues and problems' (see appendix A). These changes indicate an element of necessary dynamism. Unfortunately, however, the COAG RIS processes are not mirrored by some individual governments' gatekeeping arrangements.

A second tier of systemic improvement could derive from the Regulation Review Unit Forum, comprised of Australian Government and state and territory (and New Zealand) gatekeepers. The forum meets annually and is, in part, a vehicle for exchanging information on better practices. If an environment can be cultivated whereby jurisdictions operate transparent gatekeeping arrangements, then exposure to different processes and associated feedback and learning will be promoted.

Like most modern economies, Australia is subject to a rapid regulatory accretion, and governments face a variety of pressures to enact new laws. Where new laws are in the public interest, community welfare is enhanced. But the costs as well as the anticipated benefits of regulation must be assessed rationally. This is the role of gatekeeping systems, and while there have been improvements, many governments have systems that fall short of best practice, particularly given that the 'best practice frontier' is becoming more challenging. That best practice gatekeeping is a dynamic process is evidenced by new developments in other nations, such as the United Kingdom, which also are grappling with how to improve legislation and thus, national living standards.

Based on its experience with the NCP program, the Council considers that a strong commitment by governments to gatekeeping is the indispensable ingredient. As the Chairman of the Productivity Commission concluded, 'what is needed is deeper recognition within government of the value of good process itself, which the RIS "paperwork" simply records. That will require more fundamental change, which can really only be inculcated from the top down' (Banks 2005, p. 16). Box 4.5 provides the Council's checklist for robust gatekeeping arrangements, based on various models operating within Australia

Box 4.5: Elements of best practice gatekeeping

Institutional environment settings (COAG and individual governments)

- A high level commitment by governments to the importance of good process to achieve high quality regulation
- Consideration given to assessing the quality of the stock of legislation, in addition to ensuring the flow of high quality new legislation
- (At least initial) external monitoring, comparison and assessment of the performance of gatekeeping systems as governments move to improve these arrangements
- Cross-jurisdictional information exchange through the Regulation Review Forum as a vehicle to continually promote best practice gatekeeping systems

Whole-of-government process issues

- Legislative underpinning for the application of regulatory impact assessments for primary, subordinate and quasi regulation
- Structured integration of RIS processes into agencies' regulatory policy development roles
- Mandatory guidelines for the conduct of RISs, with appropriate cost–benefit assessment frameworks that focus on the quantification of costs and benefits for consumers, business, government and the community, and that appropriately explore alternatives to meet the stated objectives
- Greater awareness of the risks of using regulation to achieve off-budget solutions and/or to placate vested interests, rather than adopting a community-wide perspective

The gatekeeper

- Optimal model: an independent statutory gatekeeper established under a separate Act or through protocols to ensure independence
- Second best: an independent entity removed from a direct role in policy formulation with an appropriate 'Chinese wall', adequate resources and a high level line of reporting
- Responsibility for 'failsafe' systems to ensure all regulatory proposals are scrutinised to determine whether a RIS should be undertaken, and that RISs are conducted in a timely manner to avoid *ex post* justifications
- Capability to provide/withhold certificates of adequacy for RISs before consideration by Cabinet (or to not accept poor quality RISs)
- Training capabilities and high level imprimatur to work with agencies in developing RISs
- Public monitoring and exposure of agencies' compliance with RIS requirements and the quality of RISs prepared

Transparency

- Where appropriate, the conduct of RISs at the consultation stage and for the decision maker
- RISs made publicly available when legislation is introduced, including expurgated RISs where genuine confidentiality considerations arise
- A publicly accessible repository for RISs
- Incorporation of sunset clauses to facilitate *ex post* evaluation of the projected costs and benefits from the RIS

Table 4.1: Productivity Commission's reporting of RIS requirements and processes

Jurisdiction	*Bills*	*Subordinate instruments*	*Quasi regulation*	*RIS for consultation*	*RIS for decision maker*	*RIS guidelines*	*Cost–benefit assessment*	*Report on RIS compliance*	*Regulatory plans*	*Sunset clauses*
COAG									na	
Aust. Govt										
NSW										
Victoria										
Queensland										
WA										
SA										
Tasmania										
ACT										
NT										

Process/requirements in place | Qualified process/requirements in place | No process/requirements in place

Note: Table 4.1 focuses on governments' processes and requirements for the preparation of RISs to ensure regulatory quality. It is broader in scope than table 4.2, which focuses only on whether governments have processes in place that provide an assurance that the clause 5(1) guiding principle is applied to all new legislation (Acts, enactments, Ordinances and regulations).

Source: PC 2004a, tables F.1 and F.2.

Table 4.2: National Competition Council's assessment of gatekeeping arrangements for new legislation

Jurisdiction	*Formal assessment—Bills*	*Formal assessment—subordinate legislation*	*Published guidelines for assessing new regulation*	*RIS guidelines that specifically embody competition impacts*	*Independent assessment of gatekeeper requirements*	*Independent reporting of gatekeeper requirements*
Australian Government						
Victoria						
Queensland						
Northern Territory						
South Australia						
Tasmania						
ACT						
New South Wales						
Western Australia						

Effective process | Process in place: scope to improve | No formal process

Note: The key focus of table 4.2 is on whether governments have processes in place that provide an assurance that the clause 5(1) guiding principle is applied to all new legislation (Acts, enactments, Ordinances and regulations). The clause 5(1) focus is a narrower subset than that of able 4.1, which reports the machinery of RIS requirements and RIS processes by jurisdiction. Table 4.1 also accounts for regional, community, business (and small business) and family and society impact assessments.

Source: NCC 2004, pp. 4.5–4.20; governments' 2005 NCP annual reports.

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* (Cwlth) within 30 days of the legislation being enacted or made.

Section 51(1) of the Trade Practices Act (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 lists 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 2004 NCP assessment, only one government has advised the ACCC that it has enacted legislation relying on s51(1) of the TPA.

On 14 October 2004, the Western Australian Government notified the ACCC that the Electricity Industry (Wholesale Electricity Market) Regulations 2004 were gazetted on 30 September 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.

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 on 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.

In June 2004, COAG made changes to its principles and guidelines and also to protocols for the operation of ministerial councils (see box 5.1).

Box 5.1: Changes to principles and guidelines of the Council of Australian Governments

The following changes were made to enhance the application of the principles of good regulatory practice by COAG, ministerial councils, intergovernmental standard setting bodies and bodies established by government to deal with national regulatory issues and problems.

- It is clarified that the guidelines apply to COAG, as well as to ministerial councils and national standard setting bodies and bodies preparing advice to ministerial councils/standard setting bodies.
- Minor or machinery regulatory matters and 'brainstorming' by ministers are exempt from regulation impact statements (RIS) requirements.
- For multi-staged decision making, follow-up RISs for regulation implementing the original decision will not generally be required.
- The National Competition Principles Agreement is explicitly acknowledged.
- The importance of early consultation with the Office of Regulation Review (ORR) and forward notice of the preparation of a RIS is noted.
- Where a trans-Tasman issue is involved, the ORR is to refer the draft RIS for consultation to the ORR's counterpart in the New Zealand Government.
- It is clarified that the final RIS for the decision makers is to be provided to the ORR for assessment.
- Provision is made for genuine regulatory emergencies, with the ORR able to 'post assess', within 12 months, the briefing material prepared for the decision makers.
- The independent role of the ORR is clarified, including a reference that the ORR not comment on the merits of regulatory proposals or support any particular jurisdiction.

Changes to the principles and guidelines also relate to the content of RISs:

- The principles of the Trans-Tasman Mutual Recognition Arrangement must be adequately considered.
- A RIS should consider the impact on business and on the broader community.
- Requirements to document compliance costs and small business impacts are more robust.

Source: appendix A.

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 2004 to 31 March 2005 is reproduced in appendix A. It revealed that:

- an adequate consultation RIS was prepared for 83 per cent of matters, slightly above the 82 per cent compliance rate achieved in the previous reporting period
- of the 24 decisions by ministerial councils and national standard setting bodies, compliance with COAG's requirements was 88 per cent—the same as the rate achieved in the previous reporting period, but lower than the 96 per cent achieved in the 12 months to 31 March 2002.

Of the 24 decisions reported over the year to 31 March 2005, the ORR considered six to be more significant than others, based on the nature and magnitude of the problem and the regulatory proposals for addressing it, and on the scope and intensity of the proposals' impacts on the affected parties and the community:

1. the decision by the Australian Building Codes Board to amend the Building Code of Australia to introduce construction standards aimed at reducing residential amenity problems caused by the transmission of sound between units in multi-unit dwellings

2. the decision by the Ministerial Council on Energy to revise minimum energy performance standards for three-phase electric motors

3. the decision by the Ministerial Council on Energy to introduce new performance standards for commercial refrigeration cabinets

4. the decision by the National Occupational Health and Safety Commission to amend the national exposure standard for crystalline silica in the workplace

5. the agreement by COAG to the National Water Initiative

6. the agreement by COAG to the national regulation of ammonium nitrate.

The ORR reported that RISs for all but the last decision complied with COAG's requirements at the consultation and decision making stages. (The National Water Initiative had qualified compliance at consultation.) For the national regulation of ammonium nitrate, the COAG requirements were met at the decision making stage but not the consultation stage. In sum, the compliance results for the six matters of 'greater significance' were 83 per cent at consultation and 100 per cent at decision making.

The ORR's report also provided compliance statistics for the period 2000–01 to 2004–05. It noted that the main reasons for noncompliance include:

- poor understanding of COAG's requirements and the scope of their application

- poor understanding of the regulatory impacts of national decision making

- a lack of contact with the ORR before consultation on regulatory proposals and also before decision making

- a lack of follow-up on ORR advice.

The Council encourages ministerial councils and intergovernmental standard setting bodies to adhere to the COAG approach in making all regulations. COAG's strengthening and clarification of the principles and guidelines (box 5.1) will likely encourage improved decision making processes.

6 Electricity

Government electricity reform commitments are set out in 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). Under the electricity agreements New South Wales, Victoria, Queensland, South Australia, Tasmania and the ACT have committed to establishing of a fully competitive national electricity market (NEM) featuring a national wholesale electricity market and an interconnected electricity grid. Specific objectives set out in the electricity agreements for a fully competitive NEM include:

- the ability of customers to choose the supplier, including generators, retailers and traders, with which they will trade
- non-discriminatory access to the interconnected transmission and distribution network
- no discriminatory legislative or regulatory barriers to entry for new participants in generation or retail supply
- no discriminatory legislative or regulatory barriers to interstate and/or intrastate trade.

The CPA obliges all state and territory governments to undertake structural reform and legislation review in the electricity sector.

Arising from the 2004 National Competition Policy (NCP) assessment, the major outstanding commitments for the NEM jurisdictions relate to addressing identified deficiencies in the NEM and to maximising the potential for competition in electricity retail markets. Some NEM jurisdictions also have specific outstanding electricity commitments: South Australia—inconsistent intra-NEM approval arrangements; Tasmania—entry into the NEM; and Queensland—full retail contestability. Western Australia and the Northern Territory have yet to complete all reforms which they committed to under the CPA in the area of structural reform and legislation review and reform.

The national electricity market: recent progress

On 30 June 2004, all Australian governments signed the Australian Energy Market Agreement. The agreement gives effect to the recommendations of the

Ministerial Council on Energy stemming from the COAG Energy Market Review 2002 (the Parer review). The following are key elements of the agreed reform package, along with progress to date:

- *Governance*—the Ministerial Council on Energy subsumed the National Electricity Market Ministers Forum to become a single energy market policy body.

- *Economic regulation*—the Australian Energy Market Commission with responsibility for rule making and market development, and the Australian Energy Regulator with responsibility for market regulation (other than retail pricing) and enforcement, have been created. By the end of 2006 these institutions will have replaced 13 (mainly state based) bodies.

- *Electricity transmission*—in May 2005, the Ministerial Council on Energy announced that it would provide the Australian Energy Market Commission with rule changes it had developed to implement a new NEM transmission planning function, a process for assessing wholesale market regional boundaries and principles concerning the regulatory test for transmission investment. The National Electricity Market Management Company (NEMMCO) developed and implemented the Annual National Transmission Statement. NEMMCO published its first statement in July 2004. A revised regulatory test for investment in transmission has also been implemented.

- *User participation*—the Ministerial Council on Energy released a User Participation Policy Statement in August 2004. Its aim is to improve efficiency in the energy sector by increasing end user participation through initiatives that include: improving consumer advocacy arrangements; removing regulatory, market and technical impediments to user participation; and improving end-user awareness of demand side opportunities. (For details on progress related to user participation issues see the section on retail market competition, p. 6.4.)

In addition to reforms coordinated at the national level, Victoria is seeking to remove unnecessary state-specific regulations. It is, for example, reviewing the rationale for its cross-ownership, based on evidence that vertical integration between generators and retailers in the electricity market can reduce the cost of risk management for companies and consumers without reducing the level of competition between generators and between retailers. Victoria released an issues paper on this matter in December 2004 and expects decide on the future of the cross-ownership laws in 2005.

Outstanding NEM related commitments relevant to South Australia and Tasmania are discussed below.

South Australia—licensing arrangements

In its 2003 and 2004 NCP assessments, the National Competition Council expressed 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 South Australia–New South Wales interconnect project, which was approved through NEM regulatory processes but also subject to a customer benefits test under South Australian licensing arrangements. The Council considered that implementation of the new governance arrangements and regulatory harmonisation under the Ministerial Council on Energy's reform program would likely address any potential problems. (As discussed, both the Australian Energy Market Commission and the Australian Energy Regulator have been established.)

South Australia considers that it does not need to change its licensing arrangements. The South Australian Government advised that it is continuing to work with other jurisdictions in relation to transmission policy at the national level, with transmission licensing remaining a state responsibility. The Essential Services Commission of South Australia (ESCOSA)—an independent regulatory body—is responsible for licensing. Under the *Electricity Act 1996* (SA), ESCOSA must ensure that licence holders are suitable to operate an electricity business and that their licensing proposals are compatible with public safety and network security requirements. The *Essential Services Commission of South Australia Act 2002* also requires it to determine whether a licensing proposal is in the long term interests of South Australian consumers in relation to the price, quality and reliability of essential services. ESCOSA's decisions on licensing matters are subject to appeal to the District Court of South Australia.

Differing approaches to regulation across jurisdictions can distort investment decisions and create unnecessary costs. In recognition of such costs South Australia and other NEM jurisdictions committed to harmonising regulatory arrangements across jurisdictions. The new regulatory arrangements, which will see the Australian Energy Market Commission and the Australian Energy Regulator take responsibility by the end of 2006 for most of the rule making, market development and regulation, will likely address regulatory inconsistencies such as that encountered in the South Australia–New South Wales interconnect.

Tasmania—national electricity market participation

On 29 May 2005, Tasmania entered the NEM after having met all 121 preconditions for its entry, which involved implementing a suite of structural, regulatory and transitional arrangements. Tasmania's active participation in the NEM will not occur until late April 2006, because damaged converter

station transformers essential to completing the Basslink interconnector between Tasmania and Victoria must be replaced.

Key reforms since the 2004 NCP assessment have included:

- the passing of legislation to effect the separation of the Bell Bay Power Station from Hydro Tasmania to allow for effective competition
- the establishment of principles for Hydro Tasmania to follow in relation to Basslink bidding and interregional revenues (Ministerial Notice under s36 of the *Electricity Supply Industry Act 1995* (Tas))
- the implementation of regulations requiring Hydro Tasmania to publish information on energy in storage.

The Council is satisfied with Tasmania's implementation of measures to participate in the NEM. While Basslink is yet to be completed, Tasmania is ready to participate.

Retail market competition

All NEM jurisdictions other than Queensland and Tasmania (which entered the NEM only in May 2005) have introduced full retail contestability. Each jurisdiction maintains some form of regulated tariff and/or prices oversight while markets are in transition to effective competition. The form of the pricing regulation and its potential impact on competition differs across each jurisdiction.

As noted, NEM jurisdictions have agreed that where full retail contestability is operating, retail price caps be aligned with costs and the need for the price caps should be reviewed periodically. Jurisdictions are not committed to a date for implementing reforms to retail price caps.

In the 2004 NCP assessment, the Council considered that decisions to extend retail price controls should be supported by independent reviews, as in New South Wales, South Australia and Victoria. Further, it is desirable to have an independent regulator investigate and determine regulated tariffs/revenue caps, as in New South Wales, South Australia, Tasmania 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 to manage the government's risk of fluctuating wholesale prices stemming from the delivery of uniform retail tariffs. In the 2004 NCP assessment, the Council concluded that the Queensland approach does not have an anti-competitive effect, but it expressed continuing concern that the New South Wales mechanism—the Electricity Tariff Equalisation Fund (ETEF)—could raise barriers to entry to new generation and adversely affect emerging retail competition.

In relation to other retail market competition matters being considered by the Ministerial Council on Energy, the Standing Committee of Officials, among other things is undertaking a more detailed study of an aggregation facility, for pooling buyers who are able to reduce demand in response to high NEM prices. This could provide an alternative to insurance hedging products, potentially offering significant savings.

In August 2004 the Ministerial Council on Energy agreed that all NEM jurisdictions that have not done so should review the use of interval meters and assess the relative benefits of an interval meter rollout by 2007. To assist this task it has released a paper prepared by the User Participation Working Group aimed at establishing agreed principles for assessing the costs and benefits of interval meter rollout.

This 2005 NCP assessment reports on developments on retail market competition, with a focus on developments in retail prices oversight in each of the NEM jurisdictions. It also considers outstanding issues in relation to the ETEF arrangement in New South Wales and the implementation of full retail contestability in Queensland.

New South Wales

Regulation of retail tariffs

New South Wales uses regulated retail tariffs for small customers (those using less than 160 megawatt hours of electricity a year) supplied under a standard form contract. This is a transitional measure pending the development of effective retail competition. In September 2003, the government decided to extend regulated tariffs until 30 June 2007.

The Independent Pricing and Regulatory Tribunal (IPART) finalised its regulated retail tariff determination in June 2004 and set price paths to move prices closer to the cost of supply, so as to remove barriers to efficient competition and to provide signals for efficient investment in new generation capacity. The New South Wales Government considers that IPART's

determination provides a balance between better signalling the cost of supply and protecting small retail customers from significant price shocks.

In developing its energy policy white paper, the New South Wales Government reviewed how regulated tariffs are set and the impact of price regulation on investment. In its energy directions green paper, it canvassed three options for the form of retail price regulation to apply after 30 June 2007:

1. gradually reducing the small retail customer definition threshold, say, lowering it by 40 megawatt hours a year

2. discontinuing price regulation for electricity from 1 July 2007 where there is evidence that competition is sufficiently developed to protect small consumers

3. transferring responsibility for price regulation from the New South Wales Government to the Australian Energy Regulator (Government of New South Wales 2004b).

Other options the government is considering that relate to regulated retail tariffs include: mandating the roll out of interval meters for customers above a certain use threshold; and mandating step pricing (where customer must pay a higher electricity price once consumption goes above a certain electricity use threshold).

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.

The Electricity Tariff Equalisation Fund

In its 2004 NCP assessment, the Council expressed concern about the New South Wales Government's decision to extend the ETEF until 30 June 2007 in support of its decision to extend regulated tariffs. The Council considered that the fund's operation is likely to reduce liquidity in the financial and physical hedged market. This may increase the price of such financial instruments and increase the costs for other retailers, raising barriers to retail market entry. The Parer review had similar concerns and recommended that the fund be withdrawn and that the government restructure its generation sector to provide genuine competition in New South Wales and across the NEM.

New South Wales considers the ETEF to be a transparent mechanism through which it delivers a community service obligation to price regulated electricity customers. It considers that the fund is less distortionary than other mechanisms for minimising the risk of providing regulated contracts. And it argues that there is no evidence that the ETEF has reduced energy related financial market trading activity. In this context, New South Wales extended the ETEF until 30 June 2007, in support of its decision to extend

regulated tariffs. In its 2005 NCP annual report, it noted that generators have not contributed to the ETEF since July 2002 (Government of New South Wales 2005a).

In its energy directions green paper, however, the New South Wales Government conceded that the fund may impede new investment. It stated that without the fund there would be strong incentives to invest in new generation capacity as the supply–demand balance tightened (Government of New South Wales 2004b). It considers, therefore, that it may be feasible and appropriate to allow the fund to expire on 30 June 2007. The government is yet to make a final decision on this matter.

Victoria

Under its reserve pricing powers, the Victorian Government can 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 2005 NCP annual report, the Victorian Government restated that its 'goal is to have energy prices set by the market rather than regulation' (Government of Victoria 2005, p. 3). It has previously noted that it does not automatically exercise its reserve pricing power to constrain retailers' standard prices and that it has done so only where concluding that 'market power is being exercised and proposed retailer pricing was not justified' (Government of Victoria 2004, p. 18).

In December 2003, the Victorian Government announced a voluntary agreement with the privately owned energy retailers to lock in a pricing structure to the end of 2007 that delivers a real decrease in electricity prices over the four-year period. The government's stated 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 development 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 the government should consider a gradual rollback, and potentially the elimination, of retail price regulation. In response to the commission's report, the Victorian Government passed legislation in spring 2004 to extend

its consumer protection arrangements until 31 December 2007. It anticipates that price regulation will continue until retail competition is fully effective.

The government also introduced several new consumer protection measures, including a prohibition on late payment fees; a penalty payment of $250 per day by retailers to consumers where supply disconnection occurs contrary to the provisions of the Energy Retail Code; and reserve powers to regulate early exit fees and pre-payment meters.

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 energy concessions and relief grants for electricity to low income groups, to help address fuel poverty. It also established a Committee of Inquiry into Financial Hardship of Energy Consumers, to develop an effective hardship policy framework and further address the issue of supply disconnection.

In July 2004, Victoria announced a mandatory rollout of interval meters for electricity customers in line with recommendations of the Essential Services Commission of Victoria. The rollout of new and replacement meters is expected to begin in 2006 based on a timetable related to customer size and meter type. The introduction of interval meters will facilitate the further introduction of cost-reflective tariffs and enable consumers to better understand and manage their energy consumption and spending. It may also facilitate customer aggregation arrangements.

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 a year (tranche 4A customers) 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 pending implementation of contestability for tranche 4A customers and 15 per cent pending 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, which commenced on 1 July 2004. In the 2004 NCP assessment, the Council thus recommended full release of the 10 per cent payment suspension tied to this matter. By the time of that assessment, however, Queensland had not reviewed the costs and benefits of

full retail contestability in accord with its 2003 commitment. The Council thus recommended that the 15 per cent suspension of 2003-04 competition payments be deducted permanently; it also recommended a new suspension of 15 per cent of 2004-05 competition payments, pending Queensland's completion of the review of full retail contestability and implementation of its findings. The Australian Government accepted this recommendation.

Queensland has recently completed a new cost–benefit analysis of full retail contestability conducted by independent consultant GHD. The study indicates that full retail contestability could generate net benefits of up to $624 million over a five year period by removing the wholesale energy purchasing arrangement. The study also estimates that the cost of implementing FRC can be reduced from $184 million to $55 million by using a simpler approach, such as maintaining shared IT support arrangements and using the capacity developed by the NEMMCO to support FRC.

On 28 September 2005, the Queensland Premier announced that full retail contestability would be introduced for small businesses and households from 1 July 2007 (Beattie 2005). The Electricity Amendment Regulation (No.2) 2005 was passed on 6 October 2005 to give effect to the July 2007 starting date.

The Council assesses that Queensland has now met its NCP obligations in relation to full retail contestability, thereby satisfying the conditions for release of the suspended 2004-05 NCP payments.

Regulation of retail tariffs

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.

In its 2005 NCP annual report, the Queensland Government noted the requirement to align retail caps with costs and periodically review the need for price caps does not apply to it. It is examining the issue, however, as part of the current review of full retail competition.

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 ESCOSA. 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 applies 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. Following a review by IPART in March 2004 of ESCOSA's method in setting the standard contract price, however, the government extended the expiry date for the standing contract provisions from 1 July 2005 to a date to be fixed by proclamation. The current ESCOSA price determination allowed for an average price increase of 1.2 per cent on 1 January 2005 for small customer's bills, and provides for further price changes each July over the 2005–2007 period on the basis that AGL will achieve annual real decreases in its controllable costs.

Customer transfer numbers published by ESCOSA indicate that small customers are taking advantage of retail competition. Around 270 000 small customers (or 37 per cent) have transferred or are transferring to market contracts (ESCOSA 2005). This figure includes 75 000 energy concession recipients who took advantage of the one-off $50 electricity transfer rebate offered by the government for switching from the standard contract to a market contract before 13 August 2004. Eligible concession recipients on market contracts receive a concession on their energy bills of about 33 cents a day, or $120 a year. The government reimburses the energy retailer for the amount of the concession.

Tasmania

Full retail contestability

Tasmania proposes that the first tranche—covering around 19 customers consuming in excess of 20 gigawatt hours a 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. Regulations that set the framework and structural arrangements for the introduction of retail contestability commenced on 1 August 2005.

Table 6.1: Tasmania's retail contestability timetable

Introduction of contestability	*Electricity consumption (gigawatt hours a year)*	*Approximate number*	*Indicative customer type*
1 July 2006	≥20	19	Mineral processors and heavy manufacturing plant
1 July 2007	≥4	41	Food processing plant and multi-storey office complexes
1 July 2008	≥0.75	293	Supermarkets, engineering workshops and smaller commercial complexes
1 July 2009	≥0.15	1 233	Fast food restaurants, service stations and restaurants
1 July 2010	Less than 0.15	244 000	Small businesses and households

Source: Government of Tasmania 2005.

Regulation of retail tariffs

In terms of transition arrangements and customer protection measures Tasmania proposed the following:

- Tariff customers, as they become contestable, may remain on their existing tariff arrangements for a maximum of 12 months.
- All retailers will be required to maintain base levels of consumer protection (prescribed by the Tasmanian Energy Regulator) in their retail contracts.
- Retail contracts may provide for rolling over the existing supply arrangements at the end of the contract if a replacement contract is not put in place.
- A deemed fallback contract will apply where a customer is taking supply at a connection point for which a retailer is financially responsible but where there is no contract or tariff covering that supply.
- On the introduction of retail contestability, a 'retailer of last resort' scheme will be introduced to protect customers in the event of an unplanned exit by a retailer. (Aurora Energy in its capacity as the holder of a licence authorising the distribution of electricity will be the designated retailer of last resort.)
- Distribution charges will continue to be regulated. (Retailers are subject to revenue cap and prices oversight by the Tasmanian Energy Regulator.)

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 (those who do not have the right to choose their electricity supplier). In May 2003, the commission issued its final determination on retail prices for franchise customers, which remains in force until 30 June 2006. The ACT Government has advised the Council that it intends to extend the arrangement until mid-2007 to coincide with a planned review of full retail contestability. The review will consider the competition and social impact of removing the regulated tariff.

In the 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.

Structural reform and legislation review and reform

Western Australia and the Northern Territory are the only jurisdictions with outstanding electricity structural reform and legislation review commitments.

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, network (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 a 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 proclaimed in September 2004. This Act along with the *Electricity Legislation Amendment Act 2003*, implements most of the reform initiatives that the government has committed to, including 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 specifies procedures for 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.* The Electricity Networks Access Code 2004, which provides for third party access to electricity networks in Western Australia commenced on 30 November 2004. Western Australia is currently seeking certification that the code is an effective access regime under s44M of the *Trade Practices Act 1974* (Cwlth).

- *A wholesale market.* The wholesale electricity market is scheduled to commence from July 2006. The market rules were proclaimed on 30 September 2004.

- *The Independent Market Operator.* This independent statutory corporation was established on 1 January 2005 to administer and operate the wholesale electricity market. It may conduct a reserve capacity auction to meet expected additional capacity requirement during peak periods.

- *Ability to 'top up' and 'spill'.* During the transition to the operation of the wholesale market independent generators can 'top up' (buy) or 'spill' (sell) electricity with Western Power to balance load capacity with demand requirements.

- *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.

Western Australia is progressively lowering retail contestability thresholds for electricity. In July 2001, it lowered the threshold from an average load of at least 1000 kilowatts (or 8760 megawatt hours a year) to an average load of 230 kilowatts (or 2000 megawatt hours a year) at a single site. On 1 January 2003, it extended contestability to customers using an average load of at least 34 kilowatts (or 300 megawatt hours a year).

The government initially aimed to introduce full retail contestability from 1 January 2005. In its 2004 NCP annual report, however, Western Australia noted that the Electricity Reform Task Force recommended delaying the implementation of full retail contestability until competition develops in the generation and wholesale markets. The task force proposed that the threshold for contestability be reduced to an average load of 5.7 kilowatts (50 megawatt hours a year) on 1 January 2005. In the 2004 NCP assessment, the Council accepted that it is appropriate for other key reforms (including the establishment of a wholesale market) to precede the introduction of further contestability.

Western Australia implemented the first tranche reduction of threshold for contestability on 1 January 2005, in line with the task force recommendation. This increased the number of contestable customers to around 12 500 and equates to approximately 60 per cent of Western Power's current load in the south west interconnected system (Government of Western Australia 2005a).

In 2003, the government introduced the Electricity Corporations Bill 2003. If passed, this Bill would have implemented 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, network 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 'the most significant recommendations of the Task Force'(Electricity Reform Task Force 2002, p. vii). It noted too that 'central to the proposed structural change is the disaggregation of Western Power' (Electricity Reform Task Force 2002, p. vii).

The Electricity Corporations Bill 2003 progressed to a second reading in the Legislative Council before being withdrawn, with the government stating that publicised opposition made it evident that the Bill would not pass a third reading. Nevertheless, the government stated in its 2004 NCP annual report that it continued to be committed to the disaggregation of Western Power and would re-introduce the disagreggation legislation following the next election. The Electricity Corporations Bill 2005 was passed by Parliament on 22 September 2005. The new Act provides for Western Power to be split into four independent corporations by 31 March 2006, thus providing separate generation, retail, network and the regional electricity supply services.

In addition, on 7 April 2005 the Minister for Energy issued a direction to the Western Power Corporation Board to cap the Western Power's generating

capacity at 3000 megawatts. This direction is in line with the recommendations of the Electricity Reform Task Force and aims is to mitigate problems that could arise from Western Power's dominance of wholesale electricity market from it controlling about 90 per cent of the electricity generating capacity. The government considers that the capacity cap provides an incentive for private investment in the electricity generating sector while giving Western Power sufficient flexibility to replace ageing and/or inefficient plant. Its intent of the direction, therefore, is pro-competitive. The government intends to maintain the cap until sufficient competition has developed in the market (projected to be some time around 2013-14).

Western Australia has completed the structural reforms recommended by the Electricity Reform Task Force. It has also made substantial progress in implementing other key aspects of the reform program. The Council therefore assesses that Western Australia has satisfied its CPA clause 4 obligations in relation to electricity reforms.

The Northern Territory

Following the 2003 NCP assessment, the Northern Territory had one outstanding legislation review matter relating to electricity—namely, s19 of the *Power and Water Corporation Act 2002*. The section provides the Power and Water Corporation with an exemption from the payment of local government rates. The Northern Territory did not repeal this section because of complexities regarding local government funding arrangements. Since 1 July 2001, however, the corporation has paid local government rate equivalents through the Northern Territory's tax equivalent regime.

The Northern Territory Treasury is currently developing options for repeal of s19 of the Power and Water Corporation Act, which it expects to be ready for the government to consider in late 2005. It further noted that the territory has no intention of removing the requirement for Power and Water Corporation to pay either local government rates or rates equivalents.

The Northern Territory considers that the current rates equivalent regime satisfies national competition policy requirements. The Council accepts that the arrangements instituted by the government satisfy competitive neutrality requirements and are an appropriate transitional reform measure, pending repeal of s19.

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*	Contains constitution of Pacific Power.	Not for review. The government established new state owned corporations from Pacific Power's generation and transmission businesses.	Act repealed.	Meets CPA obligations (June 2003)
	Electricity Safety Act 1945	Contains requirements relating to the authorisation and inspection of electrical products, and regulates the sale and hiring of electrical apparatus.	Review completed in March 2002. The review recommended retaining anticompetitive provisions in the public interest.	The government approved the review's recommendations in May 2002.	Meets CPA obligations (June 2003)
	Electricity Supply Act 1995	Regulates the supply of electricity in the wholesale and retail markets.	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 New South Wales from 1 January 2002.	Meets CPA obligations (June 2003)
	Electricity Transmission Authority Act 1994	Contains the constitution of the New South Wales Electricity Transmission Authority.		Act repealed.	Meets CPA obligations (June 2001)
	Energy Administration Act 1987 (electricity related provisions)	Contains the constitution of the Energy Corporation of New South Wales.	Review completed.	Licence and approval requirements repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
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)
	Electricity Industry Act 2000	Implements electricity industry reform.	The Act was assessed against NCP principles at introduction. The Act's provisions underpin existing competition and facilitate the introduction of competition for domestic and small business customers consistent with NCP principles.		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)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Victoria (continued)	*Electricity Safety Act 1998*	Contains safety standards for equipment, and provides for licensing of electrical workers.	The Act was assessed against NCP principles at introduction. The assessment found the Act's restrictions are justified on public safety and consumer protection grounds. The Act addresses consumers' inability to detect hazardous products and assess the competency of tradespeople.	Restrictive provisions retained.	Meets CPA obligations (June 2001)
	Electricity Safety (Equipment) Regulations 1999	Sets standards and approval requirements for electrical equipment.	The Act was assessed against NCP principles at introduction. The assessment found the Act's restrictions are justified 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 showed 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*	Contains licensing requirements, conduct requirements, restrictions on trading activities, Ministerial pricing powers.	A review of safety related provisions recommended retention of anticompetitive provisions in the public interest. A review of non-safety provisions was completed in April 2002 by ACIL Consulting. The review found the Act to be pro-competitive, but recommended legislative amendments and further departmental reviews.	Safety related anticompetitive provisions separated into the *Electrical Safety Act 2002*. Legislative amendments to effect 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)
Western Australia	*Electricity Act 1945 (part 1 of 2)*	Contains regulations concerning mandated supply, the determination of interconnection prices, restrictions on the sale/hire of non-approved electrical appliances, and 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)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Western Australia (continued)	*Electricity Corporation Act 1994*	Provides for exclusive retail franchise of Western Power, entry restrictions for generation, and competitive neutrality restrictions.	Initial review completed. Further review was conducted as part of wider electricity sector reform.	Some minor restrictions related to competitive neutrality were removed by the *Statutes (Repeals and Minor Amendments) Act 1998*. Generator entry restrictions were 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 restrictions to be gradually removed.	Meets CPA obligations (October 2004)
South Australia	*Electricity Act 1996*	Restricts market entry and market conduct.	Review completed in September 2000. No reforms were recommended because the Act facilitates regulation of electricity supply in conjunction with other national electricity market reforms.	No reform required.	Meets CPA obligations (June 2003)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
South Australia (continued)	*Electricity Corporation Act 1994*	Restricts market entry and market conduct.	Review completed in September 2000. No reforms recommended because the Act facilitates the establishment of state owned corporations in South Australia in conjunction with other national electricity market reforms.	No reform required.	Meets CPA obligations (June 2003)
	National Electricity (South Australia) Act 1996	Restricts market entry and market conduct.	Review completed in September 2000. No reforms recommended because the object of the Act is to implement a national electricity market.	No reform required.	Meets CPA obligations (June 2003)
Tasmania	*Electricity Supply Industry Act 1995*	Contains conduct requirements, exclusive retail provisions, and 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)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Tasmania (continued)	*Hydro-Electric Commission Act 1944, Hydro-Electric Commission (Doubts Removal) Act 1972* and *Hydro-Electric Commission (Doubts Removal) Act 1982*	Contains the constitution of the Hydro-Electric Commission of Tasmania.		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*	Contains licensing requirements and restrictions on business conduct.	In consultation with the public, the ACT reviewed both the 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)
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)

(*continued*)

Table 6.2 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Northern Territory (continued)	*Power and Water Authority Act*		Review completed.	The Power and Water Corporations Act replaced the Act from 1 July 2002. All electricity related amendments made except for the removal of GOC's local government rate exemption (s19). This was retained because of complexities regarding local government funding arrangements that are yet to be resolved. There is no specific timetable for repeal of s19. GOC has been paying local government rate equivalents since 1 July 2001.	Does not meet CPA obligations (June 2003)

7 Gas

National Competition Policy commitments

The Council of Australian Governments (COAG) recognised in the 1990s that a well developed and competitive gas industry is vital to Australia's economic and environmental future. It thus struck agreements aimed at creating a national gas market with more competitive supply arrangements:

- 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 (the 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
Non amendment of the regime without the 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 the 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 National Competition 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 Council's view, have provided strong incentives for jurisdictions to complete the COAG reforms.

NCP gas reform has promoted the gas industry's development. The Parer 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 2004 NCP assessment identified areas in which work remained. In the following sections, the Council considers governments' progress in those 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 national Gas Pipelines Access Law (GPAL), the National Gas Code and state legislation covering the appointment of regulatory and review bodies. Governments are also required to apply for certification of their gas access regimes as being effective regimes under part IIIA of the *Trade Practices Act 1974*.

The Council previously assessed that:

- all governments have met their obligations to enact the National Gas Access Regime

---

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 a year can choose their gas supplier. Queensland advised that it will reduce the threshold to 1 terajoule of gas a year in 2005. In other states and territories, all gas customers can choose their supplier.

- all governments except Tasmania have applied for certification of their access regimes as being effective under part IIIA. It is not an NCP requirement that a regime be granted certification. Nonetheless, the access regimes of all jurisdictions other than Queensland and Tasmania have been certified as effective.[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 Trade Practices Act.
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. The Council's draft recommendation (February 2005) is that the regime is effective. The Council's final recommendation was forwarded to the Australian Government minister in April 2005.
ACT	Yes	Certified effective September 2000 for 15 years
Northern Territory	Yes	Certified effective October 2001 for 15 years

Tasmanian gas access regime

Under the 1997 gas agreement, Tasmania's obligations to enact the National Gas Access Regime and apply for certification of its regime were delayed until the state's first natural gas pipeline was approved, or until a competitive tendering process for a pipeline commenced. In 2002, Duke Energy International completed construction of a transmission pipeline from Victoria to Tasmania, with lateral pipelines to the south and north west of the state.

Tasmania signed agreements with Powerco Limited in 2003 to develop the state's distribution network. Work commenced in October 2003, with the rollout of the backbone networks scheduled for completion in 2005. A core urban network for domestic gas reticulation is being progressively built between February 2005 and April 2007.

[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. For Tasmania, see table 7.2.

Tasmania implemented the National Gas Code through the *Gas Pipelines Access (Tasmania) Act 2000*, which it passed in November 2002. Tasmania satisfied its NCP obligations in this area by applying for certification of its access regime in October 2004. The Council's recommendation on the effectiveness of the regime is with the Australian Government minister.

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 specifications 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 gas use by small customers).

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

For the 2004 NCP assessment, the Council considered that New South Wales, Victoria, Western Australia, South Australia, the ACT and the Northern Territory had met their NCP obligations by removing legal and other barriers to full retail contestability. Queensland and Tasmania were yet to implement full retail contestability. Table 7.3 outlines progress in this area.

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 a year			
1 September 1999		Customers using >100 TJ a year						
1 October 1999	Customers using >1 TJ a year					Customers using >1 TJ a year	No phase-in arrangements	
1 January 2000				Customers using >100 TJ a year				
1 July 2000					Industrial and commercial customers using <10 TJ a year			
1 September 2000		Customers using >10 TJ a year						
1 July 2001			Customers using >100 TJ a year		All customers[d]			
1 September 2001		Customers using 5–10 TJ a year						
1 January 2002	All customers			Customers using >1 TJ a year		All customers[e]		
1 July 2002				All customers[c]				
1 October 2002		All customers[a]						
2002–05			No scheduled date for customers using < 1 TJ[b]					Expected from 2005[f]

[a] Modified from previous timetable for all customers of 1 September 2001. [b] Modified from previous timetables of 1 September 2001 and 1 January 2003. Contestability for customers using 1–100 TJ a year scheduled for 2005. [c] Practical implementation occurred in May 2004. [d] Practical implementation occurred in July 2004. [e] Modified from previous timetable for all customers of 1 July 2000. [f] From commencement of gas flows through distribution networks, expected to occur progressively between 2005 and 2007.

Queensland

The Council assessed in the 2004 NCP assessment that Queensland had made no progress towards extending contestability to commercial and industrial customers using 1–100 terajoules of gas a year, despite an independent study (commissioned by Queensland) finding that the benefits of extending contestability would outweigh the costs. Queensland's lack of progress meant that consumers of less than 100 terajoules of gas a year were unable to choose their supplier. The affected parties include around 740 industrial and commercial businesses and 150 000 residential customers, comprising about 10 per cent of the Queensland gas market (by volume).

In 2004, Queensland provided the Council with two cost–benefit studies by consultants McLennan Magasanik Associates Pty Ltd (MMA 2003), which found that extending contestability would result in:

- positive net benefits for customers using 1–100 terajoules of gas a year (tranches 2 and 3)
- negative net benefits for customers using 0–1 terajoules a year (tranche 4).

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

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 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 agreement.

The Council concluded in the 2004 NCP assessment that Queensland had not complied with its obligations under the 1997 agreement and had failed to implement the recommendations of its own cost–benefit assessment. It considered that Queensland's failure to extend contestability was a serious breach of its NCP gas reform commitments. In particular, the consultancy study identified significant benefits in extending contestability, both for medium to large gas users and for the Queensland community.

Queensland reported in 2005 that it had passed a regulation to extend retail gas contestability to commercial and industrial gas customers using 1–100 terajoules a year (tranches 2 and 3) from 1 July 2005. The regulation establishes 1 terajoule as the threshold for customer contestability. The practical extension of contestability requires the implementation of market operation and business rules, of which Queensland released a consultation draft in 2005. Queensland reported it will give effect to the rules in a regulation under the Gas Supply Act. Subject to approval by the Executive

Council, the rules are scheduled to commence on 1 November 2005. There are no other barriers to contestability for tranche 2 and 3 customers.

The Council considers that the practical extension of contestability to tranche 2 and 3 customers will address Queensland's current obligations in this area. Consistent with Queensland's undertakings on this matter, the Council would expect Queensland to review no later than 2007 its decision not to extend contestability to tranche 4 customers.

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 there are no legislative restrictions to full retail contestability. Customers will be free to choose their gas supplier from the commencement of gas flows through the distribution network, which is being progressively developed for 39 500 households between 2005 and 2007. Two retailers, Powerco and Aurora Pty Ltd, have been licensed to retail gas. Tasmania envisages that customer choice will grow as the market develops.

Tasmania reported that it is developing a regulatory framework to clarify the status of embedded distribution networks. The Government intends to consider this matter by late 2005.

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 7.6. 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 can develop and grow. In 1998 the Upstream Issues Working Group reported to COAG on 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, for both offshore and onshore acreage. 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 mirrors Australian Government legislation to regulate exploration for, and the development of, undersea petroleum resources. Collectively, the legislation forms a national scheme. A review of the Acts in 1999-2000 concluded that the legislation is essentially pro-competitive and that the benefits of any restrictions on competition (in relation to safety, the environment and resource management, for example) outweigh the costs. 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 Australian Government incorporated the specific legislative reforms into the *Petroleum (Submerged Lands) Amendment Act 2002,* which it enacted in October 2002. The government then rewrote the legislation and introduced a new Offshore Petroleum Bill on 23 June 2005. The House of Representatives passed the Bill on 18 August 2005.

All relevant jurisdictions are required to amend their mirror legislation to incorporate both the specific amendments and the rewrite of the Act. All jurisdictions indicated that they will make the necessary legislative amendments, but some are awaiting the passage of the Offshore Petroleum Act before changing their own legislation. Others implemented the specific reforms and will draft legislation to mirror the new Australian Government Act once it is passed. Table 7.4 provides a summary of progress in this area.

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

Table 7.4: Amendments to petroleum (submerged lands) legislation

Jurisdiction	*Action*
New South Wales	The amendment Bill covering specific reforms was passed on 8 June 2005 and given royal assent on 15 June 2005.
Victoria	The amendment Bill covering specific reforms was passed in the autumn 2004 Parliamentary sitting and given royal assent in May 2004. Victoria will rewrite the Act following the passage of the Australian Government Act.
Queensland	The amendment Act was passed in 2004. Queensland will rewrite the Act following the passage of the Australian Government Act.
Western Australia	The specific reforms are being drafted via the Petroleum Legislation Amendment Bill.
South Australia	The amendment Bill covering specific reforms was enacted on 16 December 2004.
Tasmania	The amendment Bill covering specific reforms was passed in November 2004, but has not been proclaimed. Tasmania is awaiting the finalisation of the new Australian Government Act before proceeding with further amendments.
Northern Territory	The government is awaiting the completion of the Australian Government Act before amending its 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 a package of new legislation to Parliament in May 2004. The legislation 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 and Gas (Production and Safety) Act 2004*, the *Petroleum and other Legislation Amendment Act 2004* and associated Regulations commenced on 31 December 2004. Queensland is progressively implementing the legislation, with many provisions taking effect from 1 July 2005.

The Northern Territory reviewed its *Petroleum Act* and approved the implementation of the review recommendations. It implemented eight recommendations via the *Petroleum Amendment Act 2003* and the remaining six recommendations via the *Petroleum Amendment Act 2004,* which commenced on 13 September 2004.

Outstanding legislation review and reform matters

In addition to the natural gas legislation noted above, the review and/or reform of two additional instruments was incomplete at the time of the 2004 NCP assessment: Victoria's *Pipelines Act 1967* and Tasmania's *Launceston Gas Company Act 1982*.

Victoria's Pipelines Act regulates the construction and operation of major gas and petroleum pipelines in the state. Victoria undertook an NCP review of the Act in 1997 and announced a full review of the Pipelines Act in 2000 to develop a regulatory framework that is consistent with other forms of infrastructure. Victoria has completed that review and a Pipelines Bill implementing the NCP recommendations agreed to in the government's response of 2002 has been passed by both houses of Parliament and is awaiting royal assent. Regulations will need to be developed, so the likely commencement of the new Pipelines Act will be late 2006.

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 in the spring 2005 session of Parliament.

Tasmania has also 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 7.5). New South Wales, Queensland, South Australia and Tasmania have completed this reform. The Council considers that Victoria 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 gas entering a gas distribution system. The specification has similarities to the national standard but specifies a higher heating value range and a different hydrocarbon dewpoint. The higher heating value range is considered important in Western Australia because it forms the basis for billing customers on an energy basis, and a number of contracts reflect higher heating value. Legislation does not specify gas quality in transmission pipelines, but pipelines covered by an access arrangement must include a gas quality specification in the arrangement.

Following discussions with industry in 2004, the government decided not to adopt the national standard. Western Australia will review and, where appropriate, amend its standards to reflect the national standard if interconnection with interstate pipelines occurs. It considers that the adoption of the national standard would not have a material effect on the performance of gas appliances, but could in the longer term restrict some of the state's producers in shipping 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 important for 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 hinder 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 example, 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 for 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 7.5: 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 were amended to reference the national standard in 2004.
Victoria	Victoria is updating its Regulations in consultation with industry to make them fully consistent with, and reference, the national standards. It is finalising a working draft of the Regulations and is preparing a regulatory impact statement. It expects to implement the amendments in the second half of 2005.
Queensland	The government implemented the national standard by Regulation in 2003. The Regulation includes exemptions allowed under s1.1.2 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. Following discussions with industry in 2004, the government decided not to adopt the national standard. Western Australia will review and, where appropriate, amend its standards to reflect the national standard if interconnection with interstate pipelines occurs.
South Australia	The South Australian Regulations set the same natural gas quality specifications as those in the national standard. The government amended the Regulations in 2004 to call up the standard.
Tasmania	The government formally adopted the national standard through Regulation in 2004. The state's only gas distributor 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.
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 7.6: 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 Australian Government introduced the Offshore Petroleum Bill in June 2005. The House of Representatives passed the Bill in August 2005. 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.	An amendment Bill was passed on 8 June 2005. New South Wales is awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing further amendments.	Review and reform substantially complete

(*continued*)

Table 7.6 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 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 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 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 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 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 7.6 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 1994 Act was replaced by the *Gas Industry Act 2001* and the *Gas Industry (Residual Provisions) Act 1994* on 1 September 2001. The new 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 7.6 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.	An amendment Bill was passed in 2004. Victoria is awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing further amendments.	Review and reform substantially complete
	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 undertook a broader review of the Act in 2004.	Victoria has taken account of the recommendations from both reviews and a new Pipelines Bill has been passed by both houses of parliament and is awaiting royal assent. The new Act is expected to commence in late 2006 after Regulations have been developed.	Review and reform incomplete

(*continued*)

Table 7.6 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. It 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 reviewed in conjunction with the Gas Act (see above).	The Petroleum and Gas (Production and Safety) Bill 2004 and Petroleum and other Legislation Amendment Bill 2004 were passed on 29 September 2004 and commenced on 31 December 2004. The provisions take effect progressively from July 2005. The *Petroleum Act 1923* will continue on a limited basis for some authorities to prospect and for some petroleum leases.	Review and reform substantially complete

(*continued*)

Table 7.6 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 completed in 1999-2000 and endorsed by ANZMEC ministers.	An amendment Bill was passed in 2004. Queensland is awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing further amendments.	Review and reform substantially complete
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 a 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 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 the *Gas Corporation (Business Disposal) Act 1999*.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.6 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	Contains 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	Provides for 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 7.6 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, which recommended (1) implementing the findings of the national review of submerged lands Acts and (2) retaining potentially restrictive provisions in the Act on the grounds that they do not restrict competition and that they provide a net public benefit.	See entry for *Petroleum (Submerged Lands) Act 1982* and Regulations.	Review and reform incomplete
	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 completed in 1999-2000 and endorsed by ANZMEC ministers.	Review recommendations are to be implemented via legislative amendments.	Review and reform incomplete
	Petroleum Pipelines Act 1969 and Regulations	Regulate the construction and operation of petroleum pipelines in Western Australia.	Review completed in 2001. Recommended one amendment relating to issuing pipeline licences.	Review recommendation is to be implemented via legislative amendment.	Meets CPA obligations (June 2001)

(*continued*)

Table 7.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Cooper Basin (Ratification) Act 1975*	Ratifies the contract for the supply of gas by Cooper Basin producers to AGL.	Review completed, finding substantial public benefits in continuing granted concessions and exemptions on the grounds of sovereign risk.	Amendments were introduced to Parliament in 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)
	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 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 s50 of the *Gas Pipelines Access (South Australia) Act 1997*.	Meets CPA obligations (June 1999)

(*continued*)

Table 7.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (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 completed in 1999-2000 and endorsed by ANZMEC ministers.	An amendment Bill was enacted in 2004. South Australia is awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing further amendments.	Review and reform substantially complete
	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 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. It considered that the benefits of the restrictions outweigh the costs, and that the objectives of the legislation can 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 7.6 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 Trade Practices Act.	Review 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.	Act 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 7.6 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 to be repealed in 2005.	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.	An amendment Bill was passed in 2004. Tasmania is awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing further amendments.	Review and reform substantially complete
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 7.6 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 7.6 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.	Recommendations were implemented by the *Petroleum Amendment Act 2003* and the *Petroleum Amendment Act 2004.*	Meets CPA obligations (September 2004)
	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 awaiting the passage of mirror legislation by the Australian Government (expected in 2005) before implementing amendments.	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

Historically, each state and territory has been responsible for road transport regulation in its jurisdiction. This approach led to a lack of uniformity in driver and vehicle operations and standards, and vehicle weights and dimensions. In the early 1990s, governments agreed 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 the following six modules:

1. registration charges for heavy vehicles
2. transport of dangerous goods
3. vehicle operations
4. heavy vehicle registration
5. driver licensing
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 further 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 this 2005 NCP assessment, however, considering governments' progress in undertaking reforms that were not implemented or operational at the time of the 2004 NCP assessment. In the 2004 assessment, the Council found that Western Australia, the ACT and the Australian Government had not met completion targets. All of the incomplete reforms 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 (and 2005) NCP assessments.

The overriding consideration for the Council in this 2005 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 its agreed contribution to achieving the common platform by 30 June 2005. Except for formal exemptions or accepted alternatives, jurisdictions must have implemented all elements of the assessment frameworks.

Implementation of reforms outstanding at 30 June 2004

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 2005. Of the 147 reforms in the 1999 NCP framework across all jurisdictions, 143 (97 per cent) were satisfactorily implemented at 30 June 2005. Outstanding obligations, by jurisdiction, are noted below:

- Western Australia has two remaining reforms—(1) the introduction of the national drivers' licence classifications and (2) the one driver/one licence reforms. The Road Traffic Amendment Bill 2005 was introduced to Parliament on 30 June 2005 to implement these reforms. (It was at the second reading stage in the Legislative Council in September 2005.)

- The Australian Government is yet to implement arrangements to achieve national consistency in heavy vehicles registration schemes. It is awaiting the outcomes of a decision by the Minister for Transport and Regional Services following the completion of the review of the Federal Interstate Registration Scheme (FIRS). The decision will determine subsequent reform actions.

- In 2001, the ACT Legislative Assembly disallowed the Regulation that would have introduced continuous registration of heavy vehicles, and a 3 month registration lapse period. 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 obligation, including the optimal use of technology to detect unregistered vehicles. It is also reconsidering this matter with a view to introducing Regulations to reduce the current registration lapse period from 12 months to 3 months.

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 8.1 lists all of the road transport reform areas assessable under the NCP. It indicates the reforms that were incomplete at 30 June 2005 and the expected completion dates.

Table 8.1: Reform implementation, 30 June 2005

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**: The Legislative Assembly rejected Regulations implementing continuous registration. The ACT Government is considering alternative means of enforcing timely renewals of registration. **Australian Government**: The Australian Government delayed this reform pending a review of the Federal Interstate Registration Scheme (FIRS). The review has been completed and the Minister for Transport and Regional Services has been advised of the review's recommendations. A ministerial decision, which will determine subsequent reform action, is pending.
3 Driver licensing—uniform classes, procedures, renewals, cancellations, medical guidelines, exemptions, demerit points etc.	**Western Australia**: Final amendments to the Act and Regulations were introduced to Parliament on 30 June 2005.
4 Vehicle operations—uniform mass and load registrations, consistent oversize/overmass regulations/exemptions/pilots/escorts, restricted access vehicle	

(*continued*)

Table 8.1 continued

Road reform	*Jurisdiction still to complete implementation (expected completion date)*
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 six axles; 62.5 tonnes for tri-tri-B-doubles; set fines for exceeding these limits	
9 One driver/one licence	**Western Australia**: Final amendments to the Act and Regulations were introduced to Parliament on 30 June 2005.
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	
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 (assessed) road transport reform commitments are almost complete—of 147 reform elements across all jurisdictions, 143 have been satisfactorily implemented. Western Australia has two reforms outstanding, and the Australian Government and the ACT have one each. These outstanding commitments relate to relatively minor areas of the reform agenda.

The Council assesses that the Australian Government, Western Australia and the ACT have failed to meet their NCP obligations in relation to completing their national road transport reforms.

9 Review and reform of legislation

The Competition Principles Agreement (CPA) obliged governments to review and, where appropriate, reform legislation that restricts competition by 30 June 2002. 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 remains relevant
- ensure new legislation that restricts competition is consistent with the clause 5(1) guiding principle (see chapter 4).

CPA clause 5 originally set a target date of 2000 for governments to complete the review and reform of all legislation containing restrictions on competition. In November 2000, the Council of Australian Governments (COAG) extended the deadline to 30 June 2002. In the 2002 NCP assessment, for timing reasons, the National Competition Council provided a further year's extension 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 … the Council is likely to make adverse recommendations on payments.* (NCC 2002, p. xvi)

Consistent with this caution, for the 2003 NCP assessment the Council recommended competition payment reductions and suspensions for all state and territory governments for failure to complete review and reform activity. The reduced competition payments spurred governments to expedite reforms, resulting in many of the suspensions and deductions being lifted in the 2004 NCP assessment. Given that this 2005 NCP assessment is the final under the current NCP program, it addresses all remaining unmet commitments.

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.

In 2000, COAG directed that the Council's assessment of whether governments have met their commitments under CPA clause 5(1) should be guided by the following amendment to the CPA:

> *In assessing whether the threshold requirement of clause 5 has been achieved, the NCC should consider whether the conclusion reached in the report is within a range of outcomes that could reasonably be reached based on the information available to a properly constituted review process. Within the range of outcomes that could reasonably be reached it is a matter for government to determine what policy is in the public interest.* (COAG 2000)

Other guidance provided by COAG (2000) included:

- requesting that governments document the public interest reasons supporting their reform decisions and make this reasoning publicly available
- requesting that governments consider the likely impacts of reform measures on specific industry sectors and communities, including the likely adjustment costs
- recognising that satisfactory reform implementation may include a firm transitional arrangement that extends beyond 30 June 2002, where justified by a public interest assessment.

COAG's guidance points to the need for a rigorous analytical approach whereby reviews consider all relevant evidence and logically draw conclusions and recommendations from that evidence. Policy actions in line with review findings and recommendations based on flawed analysis or incomplete evidence may not satisfy the CPA guiding principle.

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 on competition. 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.

Competition payments

Recognising the resource demands on governments from completing reviews and (where necessary) 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. Accordingly, in 2001, the Council identified priority areas of regulation likely to have nontrivial impacts on competition (see box 4.2 in volume 1 of the 2003 NCP assessment—NCC 2003a). This prioritisation also means that the Council's resources are used more effectively in engaging with governments to progress more significant reforms. The effect of categorising legislation in this way is that the Council scrutinises closely around 800 pieces of priority legislation and monitors activity for a further 1000 nonpriority areas.

Compliance breaches for priority legislation can attract individual penalties or contribute to pool suspensions, whereas compliance breaches for nonpriority legislation do not have *direct* adverse payment implications. However, governments' *overall* performance in meeting their obligations with the suite of nonpriority legislation can bear on competition payments.

The Council's NCP assessments focus on priority legislation areas. Progress with the review and reform of nonpriority legislation is reported periodically in legislation review compendiums. However, because this 2005 NCP assessment is the final under the current NCP program, details of all outstanding nonpriority legislation are provided at the end of each government's assessment chapter (see chapters 10–18).

For this 2005 NCP assessment, the Council determined that jurisdictions would be assessed as meeting CPA obligations where:

- 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.

In many instances, outcomes have not been consistent with the obligations under CPA clause 5(1). In other cases, noncompliance is the result of a government not meeting the deadline. Where review and reform activity is incomplete owing to a need to resolve outstanding national reviews or other interjurisdictional processes, the Council has excluded these matters from its consideration of competition payments recommendations.

In making its recommendations on competition payments, the Council judges 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 the NCP.

Based on its judgment about the significance of each compliance failure, the Council determined in the 2003 and 2004 NCP assessments whether any recommended reduction in competition payments should be a specific deduction or suspension, or whether general pool suspensions should account for the compliance failure (see box 1). The Australian Government accepted all of the Council's recommendations arising from the 2003 and 2004 NCP assessments.

This 2005 NCP assessment is the last such assessment under the current NCP program and the Australian Government has advised that the 2005-06 competition payments are the last such payments. For this reason, the Council has not recommended any suspensions that would require a further review; it has thus limited recommendations on 2005-06 competition payments to deductions.

Box 9.1: Competition payments—suspensions and deductions

Permanent deductions are irrevocable reductions in governments' competition payments. The Council recommends permanent deductions for specific compliance failures. If the relevant governments have not improved compliance in these areas for the subsequent 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 and 2004, specific suspensions were recommended to apply until the relevant governments met pre-determined conditions, at which time the suspended competition payments would be released. Where commitments have not been made or met for the subsequent NCP assessment, or reform action was not implemented, the Council may recommend that the suspended payments should be withheld permanently.

Pool suspensions apply to a pool of outstanding compliance failures. If satisfactory progress has been made to improve compliance for this 2005 NCP assessment, the Council may recommend that the 2004 pool suspension be lifted or reduced. 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.

Developments since the 2004 NCP assessment

This 2005 NCP assessment considers the actions of governments over the past 12 months in the areas of noncompliance identified in the 2004 NCP assessment. Table 9.1 compares legislation review and reform outcomes in 2004 and 2005, indicating (in broad terms) the progress that has been made.[1]

Most governments made progress in the past year. For priority legislation, however, the improvement in compliance has been mixed. Some governments (such as Victoria and Tasmania) that had made relatively good progress in the past are now faced with a 'rump' of legislation whose reform is mired in national processes and cannot be progressed in the near term.

Those jurisdictions that have historically performed poorly relative to others continue to do so, with Western Australia having completed just over 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 since the 2004 NCP assessment.

1 In interpreting the data, note that:
– the estimates can reflect the differential treatment across jurisdictions—for example, a 'Chiropractors and Osteopaths Act' would be counted once, whereas separate legislation for each profession 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, reform of the Australian Government's superannuation legislation involved 10 pieces of legislation
Given that such considerations can skew outcomes, the Council does not place undue emphasis on small deviations in compliance ratios across jurisdictions.

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

	Proportion of priority legislation complying (%)		*Proportion of non-priority legislation complying (%)*		*Proportion of total legislation complying (%)*	
	2004	*2005*	*2004*	*2005*	*2004*	*2005*
Australian Government	60	***64***	77	***89***	70	***78***
New South Wales	83	***88***	84	***94***	83	***91***
Victoria	84	***84***	86	***91***	85	***88***
Queensland	83	***85***	92	***92***	86	***87***
Western Australia	46	***55***	73	***77***	62	***68***
South Australia	60	***69***	90	***94***	77	***83***
Tasmania	82	***84***	95	***96***	89	***91***
ACT	81	***82***	98	***98***	93	***93***
Northern Territory	79	***82***	90	***90***	83	***85***
Total	***74***	***78***	***87***	***91***	**81**	***85***

[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.

Tables 9.2–9.10 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 2004 NCP assessment. Shading in the tables denotes legislation that was deemed noncompliant in 2004 but that has now been assessed by the Council as meeting NCP obligations.

Chapters 10–18 provide the detail underlying the 2005 NCP assessments for the outstanding areas. These chapters deal only with the progress of the review and reform of legislation assessed in 2004 as not meeting NCP obligations. (Legislation review and reform areas assessed in previous years as meeting NCP obligations are detailed in the 2003 and 2004 NCP assessment reports.)

Areas not assessed

Compulsory third party 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.

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. The Productivity Commission's final report (released in June 2004)

concluded that '[t]he literature does not provide a powerful case for either public monopoly or competitive private provision of workers' compensation insurance' (PC 2004c, p. 323).

In its 2004 NCP assessment, the Council was thus unable to assess whether it is necessary to have monopoly provision to achieve governments' objectives for compulsory third party and workers compensation insurance. Accordingly, the Council did not assess compliance with CPA obligations in this area. (Jurisdictions that allow competitive provision of compulsory insurance comply with their CPA clause 5 obligations, by virtue of not restricting competition.) There have been no developments, so the Council has not assessed these matters in this 2005 NCP assessment.

Compliance categories

In the 2003 and 2004 NCP assessments, review and reform activity pertaining to governments' outstanding obligations from the preceding year was encapsulated in summary tables. Each outstanding obligation was delineated as one of the following outcomes:

- 'Meets CPA obligations (year)'
- 'Does not meet CPA obligations (year)'
- 'Incomplete'
- 'Incomplete—interjurisdictional process'.

For this 2005 NCP assessment there are only two categories—'meets CPA obligations' and 'does not meet CPA obligations'. Given that this is the last assessment under the current NCP reform program, incomplete obligations (whether or not due to interjurisdictional processes) represent a failure to comply with the NCP obligations. The Council considers this view to be appropriate in light of COAG setting a timeframe of 30 June 2002 for completion of the legislation review and reform program.

Table 9.2: Progress with legislation review and reform—Australian Government

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Wheat Marketing Act 1989	Does not meet CPA obligations (2002)	Does not meet CPA obligations (2002)
Agricultural and Veterinary Chemicals Code Act 1994; Agricultural and Veterinary Chemicals (Administration) Act 1992	Incomplete	Does not meet CPA obligations (2005)
Quarantine Act 1908 (plant and animal)	Incomplete	Does not meet CPA obligations (2005)
Export Control Act 1982 (food)	Incomplete	Does not meet CPA obligations (2005)
Aboriginal Land Rights (Northern Territory) Act 1976	Incomplete	Does not meet CPA obligations (2005)
Regulations under the Export Control Act related to wood	Incomplete	Does not meet CPA obligations (2005)
Shipping Registration Act 1981	Incomplete	Does not meet CPA obligations (2005)
Navigation Act 1912	Incomplete	Does not meet CPA obligations (2005)
Therapeutic Goods Act 1989 (drugs and poisons)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Health Insurance Act 1973 (part IIA) (pathology collection centre licensing)	Incomplete	Does not meet CPA obligations (2005)
National Health Act 1953 (part 6 and schedule 1)*; Health Insurance Act 1973* (part III) (restrictions on services covered by private health insurance)	Incomplete	Meets CPA obligations (2005)
Safety, Rehabilitation and Compensation Act 1988	Not assessed (2004)	Not assessed (2004)
Interactive Gambling Act 2001	Does not meet CPA obligations (2004)	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 (2005)
Radiocommunications Act 1992 and related legislation	Incomplete	Does not meet CPA obligations (2005)
Australian Postal Corporation Act 1989	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2005)
Customs Act 1901 (part XVB)*; Customs Tariff (Anti-dumping) Act 1975*	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Customs Tariff Act 1995—Textiles clothing and footwear	Incomplete	Meets CPA obligations (2005)

Table 9.3: Progress with legislation review and reform—New South Wales

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Grain Marketing Act 1991	Does not meet CPA obligations (2002).	Meets CPA obligations (2005)
Poultry Meat Industry Act 1986	Incomplete	Meets CPA obligations (2005)
Agricultural and Veterinary Chemicals (New South Wales) Act 1994	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Marketing of Primary Products Act 1983 (Rice Marketing Board)	Incomplete	Does not meet CPA obligations (2005). (Will meet CPA obligations if proposed reforms are passed by 30 November 2005.)
Stock Medicines Act 1989	Incomplete	Does not meet CPA obligations (2005)
Veterinary Surgeons Act 1986	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Passenger Transport Act 1990 (taxis)	Incomplete	Does not meet CPA obligations (2005)
Tow Truck Industry Act 1998	Incomplete	Meets CPA obligations (2005)
Dental Technicians Registration Act 1975	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2005)
Pharmacy Act 1964	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Legal Professions Act 1987	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Travel Agents Act 1986	Incomplete — interjurisdictional process	Meets CPA obligations (2005)
Workers Compensation Act 1987	Not assessed (2004)	Not assessed (2004)
Trade Measurement Act 1989; Trade Measurement Administration Act 1989	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Gaming Machines Act 2001 (exclusive licence)	Does not meet CPA obligations (2003)	Meets CPA obligations (2005)
Environmental Planning and Assessment Act 1979 and planning and land use reform projects	Incomplete	Meets CPA obligations (2005)

Table 9.4: Progress with legislation review and reform—Victoria

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agriculture and Veterinary Chemicals (Victoria) Act 1994	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Fisheries Act 1995	Incomplete	Does not meet CPA obligations (2005)
Drugs, Poisons and Controlled Substances Act 1981	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Pharmacists Act 1974	Incomplete	Does not meet CPA obligations (2005)
Legal Practice Act 1996	Incomplete—interjurisdictional process (general) Incomplete (conveyancing restrictions)	Does not meet CPA obligations (2005)
Travel Agents Act 1986	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Accident Compensation Act 1985; Accident Compensation (Workcover Insurance) Act 1993	Not assessed (2004)	Not assessed (2004)
Transport Accident Act 1986	Not assessed (2004)	Not assessed (2004)
Trade Measurement Act 1995	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Tattersall Consultation Act 1958; Public Lotteries Act 2000	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)

Table 9.5: Progress with legislation review and reform—Queensland

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agricultural and Veterinary Chemicals (Queensland) Act 1994	Incomplete—interjurisdictional process	
Fisheries Act 1994	Incomplete	Does not meet CPA obligations (2005)
Transport Operations (Passenger Transport) Act 1994 (taxis)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2005)
Nursing Act 1992	Incomplete	Meets CPA obligations (2005)
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	Does not meet CPA obligations (2005)
Health Act 1937 (drugs and poisons)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Legal Practitioners Act 1995; Queensland Law Society Act 1952	Incomplete—interjurisdictional process (general) Does not meet CPA obligations (2004) (conveyancing restrictions)	Does not meet CPA obligations (2005)
Travel Agents Act 1988	Incomplete—interjurisdictional process	Meets CPA obligations (2005)
Auctioneers and Agents Act 1971 (maximum commissions for auctioneers and real estate agents); *Property Agents and Motor Dealers Act 2000*	Incomplete	Does not meet CPA obligations (2005)
Trade Measurement Act 1990	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Workcover Queensland Act 1996	Not assessed (2004)	Not assessed (2004)
Liquor Act 1992	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Gaming Machine Act 1991	Does not meet CPA obligations (2004)	Meets CPA obligations (April 2005)

Table 9.6: Progress with legislation review and reform—Western Australia

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agricultural and Veterinary Chemicals (Western Australia) Act 1995	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Agricultural Produce (Chemical Residues) Act 1983; Aerial Spraying Control Act 1966; Veterinary Preparations and Animal Feeding Stuffs Act 1976	Incomplete	Does not meet CPA obligations (2005)
Grain Marketing Act 1975	Incomplete	Meets CPA obligations (2005)
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	Does not meet CPA obligations (2005)
Veterinary Surgeons Act 1960	Incomplete	Does not meet CPA obligations (2005)
Fish Resources Management Act 1994	Incomplete	Does not meet CPA obligations (2005)
Pearling Act 1990	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2005)
Jetties Act 1926 and Regulations; *Lights (Navigation) Protection Act 1938; Shipping and Pilotage Act 1967* and Regulations*; Western Australian Marine Act 1982*	Incomplete	Meets CPA obligations (2005)
Marine and Harbours Act 1981 and Regulations	Incomplete	Does not meet CPA obligations (2005)
Transport Co-ordination Act 1966 (air route licensing)	Incomplete	Meets CPA obligations (2005)
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	Does not meet CPA obligations (2005)
Medical Act 1894	Incomplete	Does not meet CPA obligations (2005)
Poisons Act 1964; Health Act 1911 (part VIIA) (drugs and poisons)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Pharmacy Act 1964	Incomplete	Does not meet CPA obligations (2005)
Legal Practitioners Act 1893	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Auction Sales Act 1973	Incomplete	Does not meet CPA obligations (2005)

(*continued*)

Table 9.6 continued

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Travel Agents Act 1985 and Regulations	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Settlement Agents Act 1981	Incomplete	Does not meet CPA obligations (2005)
Pawnbrokers and Second-hand Dealers Act 1994	Incomplete	Does not meet CPA obligations (2005)
Debt Collectors Licensing Act 1964	Incomplete	Does not meet CPA obligations (2005)
Employment Agents Act 1976	Incomplete	Does not meet CPA obligations (2005)
Hairdressers Registration Act 1946	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2005)
Real Estate and Business Agents Act 1978	Incomplete	Does not meet CPA obligations (2005)
Motor Vehicle (Third Party Insurance) Act 1943	Not assessed (2004)	Not assessed (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 (2005)
Petroleum Products Pricing Amendment Act 2000; Petroleum Legislation Amendment Act 2001	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Retirement Villages Act 1992	Incomplete	Does not meet CPA obligations (2005)
Credit (Administration) Act 1984	Incomplete	Does not meet CPA obligations (2005)
Weights and Measures Act 1915	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Gaming Commission Act 1987 (exclusive licences)	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2005)
Gaming Commission Act 1987 (minor gambling)	Does not meet CPA obligations (2004)	Meets CPA obligations (2005)
Betting Control Act 1954	Does not meet CPA obligations (2003)	Meets CPA obligations (2005)
Racing Restrictions Act 1917; *Racing Restrictions Act 1927*	Does not meet CPA obligations (2003)	Meet CPA obligations (2005)
Totalisator Agency Board Betting Act 1960	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2005)
Town Planning and Development Act 1928; Western Australian Planning Commission Act 1985; Metropolitan Region Town Planning Scheme Act 1959	Incomplete	Does not meet CPA obligations (2005)
Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989	Incomplete	Does not meet CPA obligations (2005)

(continued)

Table 9.6 continued

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Architects Act 1921	Incomplete	Meets CPA obligations (2005)
Water legislation (clause 5 obligations)	Incomplete	Does not meet CPA obligations (2005)

Table 9.7: Progress with legislation review and reform—South Australia

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agricultural and Veterinary Chemicals (South Australia) Act 1994	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Barley Marketing Act 1993	Incomplete	Does not meet CPA obligations (2005)
Opal Mining Act 1995	Incomplete	Does not meet CPA obligations (2005)
Fisheries Act 1982	Does not meet 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	Does not meet CPA obligations (2005)
Dentists Act 1984	Incomplete	Does not meet CPA obligations (2005)
Occupational Therapists Act 1974	Incomplete	Does not meet CPA obligations (2005)
Chiropractors Act 1991	Incomplete	Meets CPA obligations (2005)
Medical Practitioners Act 1983	Incomplete	Meets CPA obligations (2005)
Optometrists Act 1920	Incomplete	Does not meet CPA obligations (2005)
Physiotherapists Act 1991	Incomplete	Meets CPA obligations (2005)
Pharmacy Act 1991	Incomplete	Does not meet CPA obligations (2005)
Psychological Practices Act 1973	Incomplete	Does not meet CPA obligations (2005)
Chiropodists Act 1950	Incomplete	Meets CPA obligations (2005)
Controlled Substances Act 1984	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Legal Practitioners Act 1981	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Employment Agents Registration Act 1993	Incomplete	Does not meet CPA obligations (2005)
Travel Agents Act 1986	Incomplete—interjurisdictional process	Meets CPA obligations (2005)
Motor Vehicles Act 1959	Not assessed (2004)	Not assessed (2004)
Workers Rehabilitation and Compensation Act 1986	Not assessed (2004)	Not assessed (2004)
Liquor Licensing Act 1997	Incomplete	Does not meet CPA obligations (2005)

(*continued*)

Table 9.7 continued

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Shop Trading Hours Act 1977	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Petrol Products Regulation Act 1995	Incomplete	Does not meet CPA obligations (2005)
Trade Measurement Act 1993	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Trade Measurement Administration Act 1993	Incomplete—interjurisdictional process	Meets CPA obligations (2005)
State Lotteries Act 1966 (exclusive licence)	Does not meet CPA obligations (2003)	Does not meet CPA obligations (2003)
Gaming Machines Act 1992	Incomplete	Meets CPA obligations (2005)
Architects Act 1939	Incomplete	Does not meet CPA obligations (2005)

Table 9.8: Progress with legislation review and reform—Tasmania

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agricultural and Veterinary Chemicals (Tasmania) Act 1994	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Pharmacy Act 1908 (replaced by *Pharmacy Registration Act 2001*)	Incomplete	Does not meet CPA obligations (2005)
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	Does not meet CPA obligations (2005)
Legal Profession Act 1993	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Auctioneers and Real Estate Agents Act 1991	Incomplete	Does not meet CPA obligations (2005)
Travel Agents Act 1987	Incomplete—interjurisdictional process	Meets CPA obligations (2005)
Motor Accidents (Liabilities and Compensation) Act 1973	Not assessed (2004)	Not assessed (2004)
Racing Act 1983	Incomplete	Meets CPA obligations (2005)
Racing and Gaming Act 1952 (except as it relates to minor gaming), which was replaced by the *Racing Regulation Act 1952*	Incomplete	Does not meet CPA obligations (2005)
Racing and Gaming Act 1952 (relating to minor gaming)*; Gaming Control Act 1993* (gaming machines)	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2005)
Plumbers and Gas-fitters Registration Act 1951	Incomplete	Does not meet CPA obligations (2005)

Table 9.9: Progress with legislation review and reform—the ACT

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Veterinary Surgeons Registration Act 1965	Incomplete	Does not meet CPA obligations (2005)
Motor Traffic Act 1936 (taxis); *Road Transport (General) Act 1999; Road Transport (Public Passenger Services) Act 2001*	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Health practitioner legislation: *Dental Technicians and Dental Prosthetists Registration Act 1988*	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Pharmacy Act 1931	Incomplete	Does not meet CPA obligations (2005)
Drugs of Dependence Act 1989; Poisons Act 1933; Poisons and Drugs Act 1978 (drugs and poisons)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Legal Practitioners Act 1970	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Agents Act 1968 (travel agents)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
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	Does not meet CPA obligations (2005)
Public Sector Management Act 1994 (superannuation)	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Betting (Corporatisation) (Consequential Provisions) Act 1996	Incomplete	Meets CPA obligations (2005)
Betting (ACTTAB Limited) Act 1964	Incomplete	Does not meet CPA obligations (2005)
Gaming Machine Act 1987	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2004)
Interactive Gambling Act 1998	Incomplete	Does not meet CPA obligations (2004)

Table 9.10: Progress with legislation review and reform—the Northern Territory

Title of legislation	*2004 NCP assessment*	*2005 NCP assessment*
Agricultural and Veterinary Chemicals (Northern Territory) Act	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Fisheries Act 1996	Incomplete	Does not meet CPA obligations (2003)
Commercial Passenger (Road) Transport Act (taxis)	Incomplete	Does not meet CPA obligations (2003)
Health Practitioners and Allied Professionals Registration Act	Meets CPA obligations (2004), except for reservation of occupational therapist title	Meets CPA obligations (2004), except for reservation of occupational therapist title
Pharmacy Act	Incomplete	Does not meet CPA obligations (2005)
Poisons and Dangerous Drugs Act; Therapeutic Goods and Cosmetics Act (drugs and poisons); *Pharmacy Act*	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Legal Practitioners Act	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Consumer Affairs and Fair Trading Act (travel agents)	Incomplete—interjurisdictional process	Meets CPA obligations (2005)
Territory Insurance Office Act; Motor Accidents (Compensation) Act	Not assessed (2004)	Not assessed (2004)
Liquor Act	Does not meet CPA obligations (2004)	Does not meet CPA obligations (2003)
Trade Measurement Act	Incomplete—interjurisdictional process	Does not meet CPA obligations (2005)
Community Welfare Act	Incomplete	Does not meet CPA obligations (2005)
Totalisator Licensing and Regulation Act; Sale of NT TAB Act	Does not meet CPA obligations (2004)	Meets CPA obligations (2005)

Table 9.11: 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[1]

Wheat Marketing Act 1989

Until 1998 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 1998 the Act was amended 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 Australian Government minister for Agriculture before the end of 2004 on the performance and conduct of the AWBI
- conferred on the 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 government commissioned a three-member committee to review the Act against CPA clauses 4 and 5 and other policy principles (see chapter 3). 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 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

---

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

continuing the export controls to deliver greater net benefits to growers and the wider community (Irving et al. 2000).

The Committee 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 considered '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 three years a simplified system of consents for the export of wheat in bags and containers by other exporters (see box 10.1).

The 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 agreed to the development of rigorous and transparent performance indicators to ensure the 2004 review accurately measures the benefits to industry and the community.

In June 2002, the National Competition Council assessed that the government had not met its CPA 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.

Consistent with the government's response, the 2004 Wheat Marketing Review did not consider whether the wheat export single desk should

continue and, as acknowledged in the terms of reference, was not intended to fulfil NCP requirements. In responding to this review, the minister confirmed the government's intention to maintain the framework of the current wheat marketing arrangements under the Act.

Box 10.1: Consents to export wheat in bags and containers

The 2000 NCP review of the Wheat Marketing Act also recommended that the Wheat Export Authority (WEA) trial (for the three years until the 2004 review) a simplified export control system whereby it licenses exporters annually. The review committee 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 its response, the Australian Government agreed to improve the export consent system based on the licensing arrangements proposed in the review. The WEA announced the changes 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 its 2002 NCP assessment, the Council 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).

The 2004 (non-NCP) review, released in summary form 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. It recommended that the WEA adopt a longer term consent system for bagged and containerised exports, involving:

- 12-month consents with specified tonnage limits for exports to 'non-niche' markets
- 24-month consents with unlimited tonnage for exports to 'niche' markets
- clearer rules—for example, clearer definitions of 'niche' products, and more information on markets available to other exporters
- a streamlined application process, turning applications around within four days.

On 5 April 2005, the Minister for Agriculture, Fisheries and Forestry announced that the Government accepted in principle all the recommendations of the panel, and asked the WEA to bring forwards for his consideration a proposal for a revised consent system to operate from 1 October 2005.

The Productivity Commission, in its report (28 February 2005) on the review of the NCP, observed that evidence from the reform of other grain marketing arrangements, and the findings of the 2000 review:

> *… provide a compelling reason for immediately holding an independent, transparent review into the future of the wheat 'single desk'. It also notes that an early review, if it leads to liberalisation, would have spin-offs to other grain areas. For example, full*

> *deregulation in Western Australia has been made contingent on action at the Federal level.* (PC 2005a, p.267)

Accordingly, the commission recommended that the Australian Government initiate such a review (PC 2005a, p. 267).

No such review has been commissioned to date. Consequently, the Council must confirm its assessment of 2004, 2003 and 2002 that the Australian Government has not met its CPA clause 5 obligations arising from the Wheat Marketing Act because it has failed to show that restricting competition in the export of wheat is in the public interest.

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. At the time of the NCP review in 2001 the Regulations prohibited the export of:

- hardwood woodchips and other unprocessed wood from native forests unless:
  - from a region covered by a Regional Forest Agreement (RFA), or
  - the exporter holds an export licence granted by the minister
- unprocessed wood from plantations 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 holds a licence granted by the minister to export that wood.

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: New South Wales, Victoria, Western Australia, and Tasmania.

An officials committee drawn principally from the Department of Agriculture, Fisheries and Forestry (Australia) completed an NCP review of the Regulations in July 2001. The review was unable to find any significant benefit from the Regulations in encouraging either domestic processing or sustainable management of forests. In particular, it noted that a plethora of

state legislation and the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* adequately protect environmental values. It recommended that the Australian Government:

- remove export controls on sandalwood
- remove export controls over plantation sourced wood once plantation codes of practice for Queensland and the Northern Territory meet National Plantation Principles (Standing Committee on Forests 1996)
- either remove export controls over native forest sourced wood or, if the government perceives some benefit from continuing export controls, allow such exports from non-RFA regions under licence.

The government has made substantial progress. It has removed export controls on sandalwood and on plantation sourced wood except that from Queensland. The removal of export controls on wood from Queensland plantations is awaiting Australian Government approval of a plantation code of practice for the state. The export of hardwood woodchips and other unprocessed wood from non-RFA native forest remains subject to licensing.

The Australian Government will have met its CPA clause 5 obligations arising from the controls on wood exports when it removes controls on the export of wood from Queensland plantations and on wood from non-RFA native forests.

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.

The Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council retains its 2004 NCP assessment that the Australian Government has not met its CPA obligations in this area because it has not completed its reforms.

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 of 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 review found that the Act is fulfilling its purpose and delivering an overall economic benefit but recommended improving the administration of the Act, most importantly by the government:

- introducing a three-tier system of export standards:
  - Australian standards, which all manufacturers must meet
  - standards imposed by overseas governments, which only those manufacturers wishing to supply specific export markets must meet

  - market-specific requirements requested by industry.

- harmonising domestic and export standards, and making them consistent with relevant international standards

- periodically reviewing regulation against NCP principles and accelerating the review of subordinate regulation

- making monitoring and inspection arrangements fully contestable.

In April 2002, the government announced that it would implement all review recommendations. The Australian Quarantine Inspection Service, in consultation with industry, has been progressing the implementation of the recommendations such as the review of export control orders to reflect the three-tier system and to provide for contestable monitoring and inspection arrangements. The Export Control (Meat and Meat Products) Orders 2005 and the Export Control (Dairy, Eggs and Fish) Orders 2005 follow reviews of earlier orders. The export control Order relating to game, rabbit and poultry meat is soon to commence. In addition ministerial councils responsible for primary industries and food regulation have developed new Australian Standards, such as the Australian Standard for Hygienic Production and Transportation of Meat and Meat Products for Human Consumption—that harmonise domestic and export requirements of food manufacturers.

The Australian Government will have met its CPA clause 5 obligations arising from the control of food exports when it completes the reform of export control orders to reflect the three-tier system and to provide for contestable monitoring and inspection arrangements.

A9 Mining

Aboriginal Land Rights (Northern Territory) Act 1976

The *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations give traditional Aboriginal owners the right to consent to mineral exploration. In 1998 the Australian Government commissioned an independent review of this legislation. 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 reforms to the Act in light of the government's broader reform to Indigenous affairs and expects to introduce amendments to the Act in 2005.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed reform activity.

B6 Ports and sea freight

Navigation Act 1912

The Navigation Act regulates various maritime matters, including ship safety, coasting trade, the employment of seafarers, and shipboard aspects of the protection of the maritime environment. The Act restricts competition by:

- requiring all persons wishing to be a ship's master, crew or pilot to be properly qualified
- requiring all ships to meet minimum standards of construction, equipment, manning and maintenance
- prescribing employment related matters, including cabotage.

Part VI of the Navigation Act provides for the issue of coasting trade licences to ships of any flag, which allow licensed ships to engage in the coasting trade at any time, conditional on Australian rates of wages being paid to the crew while so doing. In addition, such vessels are precluded from being subsidised by foreign governments. In cases where licensed ships cannot meet all coastal shipping demand, the minister can issue single or continuous (lasting up to three months) voyage permits, which allow foreign vessels to operate without having to satisfy cabotage requirements.

This part of the Navigation Act was to have been reviewed under NCP in 1999-2000. In the event options to reform cabotage were examined in 1997 by the government's Shipping Reform Group and the government subsequently streamlined the processes for engaging in coastal trade, significantly reduced the charge for a permit to engage in coastal trade and broadened the criteria for issuing these permits, but did not remove the key cabotage restrictions.

The NCP review of the Act, except Part IV, was completed in June 2000. It recommended that Australia continue to base its regulations on internationally agreed standards, except where no international standard exists or where the Australian community expects standards to exceed international measures. It also found that some employment provisions are redundant or would more appropriately be addressed under company based employment arrangements under general industrial relations legislation, and that other employment provisions, while they should continue, should be based on performance standards (where possible) instead of prescriptive regulation. The government considered the recommendations in 2002 and 2003 but has not attempted to amend the employment related provisions of the Act.

In its 2005 review of NCP reforms, the Productivity Commission described the Australian Government's commitment to review cabotage as a 'key piece of unfinished NCP business under the legislation review programme'. The commission considers that cabotage 'reduces the competitiveness of

Australian firms that rely, or otherwise would rely, on coastal shipping' (PC 2005a, pp. 220-1). Taking into account submissions that argued that other legislative impediments contribute to diminished competitiveness by Australian ship operators, the Productivity Commission concluded that

> *… a wider review of coastal shipping would have important advantages over a narrower assessment of cabotage restrictions alone. And, while some of the impediments to better outcomes in the industry could be pursued through a self-contained reform program, coastal shipping is an integral component of the national freight transport system. Hence, to ensure that reform efforts in the industry are compatible with achieving competitive neutrality across transport modes, those reforms would be better pursued as part of the nationally coordinated and multi-modal approach in freight transport reform which the commission is proposing.* (PC 2005a, pp. 221-2).

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed (1) the review of the cabotage related provisions of the Act and (2) the reforms recommended by the 2000 review of other provisions of the Act.

Shipping Registration Act 1981

The Shipping Registration Act provides for registering ships and mortgages on ships. The Australian Government's 1997 review found that Australia should continue to legislate conditions for granting nationality to its ships in accordance with international conventions. It made recommendations to improve the workings of this legislation and to reduce compliance costs, most significantly to:

- recognise non-mortgage securities
- give added protection to mortgagees
- abolish the list of 'approved' home ports
- make the register available on-line.

The government approved amendments in 1998 to implement the review recommendations, but these did not proceed. The Maritime Legislation Amendment Bill 2005, currently before the Senate, allows access to the register online and makes minor changes with respect to closing the registration of mortgages, but does not address the other key recommendations.

The Council assesses that the Australian Government has not met its CPA clause 5 obligations arising from 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.'

Given specific Galbally recommendations relating to Australian Government legislation, and the Therapeutic Goods Act in particular, the Council considered it appropriate to examine Australian Government progress in implementing 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) considered the proposed response out of session and unanimously endorsed the final report of the Galbally review and the Australian Health Ministers' Advisory Council (AHMAC) Working Party response to the review recommendations.

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 governments initially expected the new arrangements to commence on 1 July 2005, but have deferred the agency's commencement for a year to provide more time for consultation with industry. Rather than reforming therapeutic goods legislation that is likely to be repealed in 2006, the government considers that it will implement legislative change as part of the new trans-Tasman legislation.

The COAG response to the Galbally report provides for each jurisdiction to implement required reforms over the 12 month period to July 2006. The Australian Government anticipates that it will be able to implement any

requisite reforms to the Therapeutic Goods Act (or its successor) within this same period.

The Council acknowledges that the Australian Government is considering the Galbally review recommendations in the context of new trans-Tasman legislation. However, because the Australian Government has not yet implemented the requisite reforms to its legislation, the Council must conclude that it has not met its CPA obligations on this matter.

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 specific locations including 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 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 July 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 (with appropriate terms of reference), then the government would comply with its CPA obligations.

In the context of the 2004 NCP assessment, the Australian Government advised that it has accepted the key review recommendations. For this assessment, the Australian Government has advised that the Department of Health and Ageing is working to implement the recommendations as a priority. In particular, the department has employed consultants Phillips Fox Lawyers to review the enforcement and offence provisions in the Health Insurance Act. In January 2005, the department released the issues and options paper prepared by Phillips Fox Lawyers, which foreshadows likely recommendations from the review. The proposed recommendations appear consistent with COAG requirements. The department expected to complete the review by mid 2005. It will put a package of proposed reforms to government for approval and implementation of the necessary legislative changes.

As reported by the Council in the 2004 NCP assessment, the *Pathology Quality and Outlays Memorandum of Understanding 2004/05-2008/09* between the Australian Government and the pathology industry specifies that the parties will review the approved collection centre arrangements to ensure these arrangements remain consistent with the objectives of competition policy. The review is to be completed in 2005-06, following the completion in July 2005 of the phasing in of the approved collection centre scheme. Apart from publishing the memorandum of understanding (a public document available on the Department of Health and Ageing website), the government has not announced the review or made available terms of reference. The Department of Health and Ageing advised, however, that it has developed terms of reference for the review and is putting out a tender to seek expressions of interest in undertaking the review.

The Council notes that the government's acceptance of key review recommendations is consistent with its CPA requirements. It considers that the government should expedite implementation of NCP reforms (including the commencement of subsequent reviews where necessary). The Australian Government's progress on pathology reforms since the review's completion in December 2002 has been slow. The government has failed to meet the Council's compliance benchmark—that is, a formal announcement of a review of the approved collection centre scheme, with appropriate terms of reference.

The Council thus assesses that the Australian Government has not 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)

The Australian Government regulates private health insurance funds under the National Health Act and associated Regulations. Provisions in the Health Insurance Act also govern the conduct of health funds. In 2000, the Council raised with the Australian Government its understanding that regulation prevents health funds from paying rebates for certain hospital services unless they are provided by, or on behalf of, medical practitioners, midwives or dental practitioners. The Council considered that this 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.

For the 2002 and 2003 NCP assessments, the Australian Government informed the Council that the 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. Such inclusion would allow podiatrists to negotiate with health funds to attract rebates for in-hospital podiatric surgery. Approval to commence the trials was sought in 2003.

For the 2004 NCP assessment, the Australian Government advised that attempts to establish the podiatric trials had ceased. Instead, the Health Legislation Amendment (Podiatric Surgery and Other Matters) Act was enacted. The 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, Medicare rebates for the accredited podiatric surgeon's or associated anaesthetist's fees are not available (Abbott 2004). Where the same foot surgery is performed by an orthopaedic surgeon, Medicare covers the surgery and anaesthetist's fees.)

The amendments represent only a partial response to product restriction controls because the legislation does not extend to all substitute allied health care providers.

In May 2005, the Australian Government advised the following:

- There is no impediment to allied health care providers negotiating with private health insurers for rebates for their services under ancillary health cover (see box 10.2).

Box 10.2: Health fund cover offerings

Under the present arrangements health funds may offer cover for:

- up to 100 per cent of charges levied by public and private hospitals
- up to 25 per cent of the Medicare benefits schedule fee for medical services provided in private or public hospitals—Medicare provides 75 per cent
- medical cover for fees for medical services provided in hospital above the Medicare benefits schedule fee if the fund has a practitioner agreement where the medical practitioner is covered by an agreement or gap cover scheme arrangement with the medical practitioner
- ancillary health services including dentistry, optical, physiotherapy and a range of other relevant health services—these services do not require a referral from a medical practitioner.

- Regulations prevent health funds from paying rebates for hospital accommodation and nursing care unless the services are provided by, or on behalf of, medical practitioners, obstetric nurses, dental practitioners and, from 13 January 2005, accredited podiatrists.

- The services provided by allied health care providers do not attract Medicare benefits. This had been the case since 1983. However, from 1 July 2004, Medicare rebates have been available for certain allied health services, including those provided by podiatrists.

The Australian Government further stated that, although conscious of the Council's concerns, it is responsible for ensuring that any changes affecting the delivery of health services by alternative providers do not have a detrimental impact on the broader health system, including Medicare. It stated that this responsibility is recognised by the public interest provisions in the Competition Principles Agreement.

Moreover, the government also stated that representations from alternative providers will be considered on an individual basis, in line with the government's responsibility to ensure that any changes do not have a detrimental impact on the broader health system.

In sum, the Australian Government has:

- introduced reforms in relation to podiatry services

- elaborated on the need to balance carefully competition objectives with broader social and budgetary objectives

- committed to assessing the merits of further easing the product restrictions on a case by case basis

Given these developments, the Council assesses that the Australian Government has met its CPA obligations in this area.

F1 Workers compensation insurance

Safety, Rehabilitation and Compensation Act 1988

Not assessed (see chapter 9).

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. The Australian Government Office of Regulation Review 'failed' the regulation impact statement for the proposed legislation at both the consultation and decision making stages.

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 reviewed the Act in line with the statutory requirement under 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 likely, on balance, likely to outweigh the costs (particularly those costs associated with problem gambling). The review found that restricting access by 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 this finding did not account for implementation and administration costs, or for effects on the efficiency of payments systems. The review did not assess the costs and benefits of making it an offence to provide certain forms of interactive gambling services to customers physically located in Australia; rather, it examined issues related to whether the legislated framework was preventing the escalation of problem gambling resulting from new interactive gambling services.

Following the review, the Australian Government announced that it would not take any specific regulatory action in relation to betting exchanges. The government perceives the licensing and regulation of gambling services as a matter for the states and territories.

Given that the review did not address the principal restrictions on competition, the Council maintains its previous assessment 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. They impose a variety of restrictions on competition, some of the most important being as follow:

- The number of commercial free-to-air television broadcasters is restricted, in effect, 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[2], to the advantage of pay television operators, but these operators are not allowed to broadcast major sporting events that are on the 'antisiphoning' list unless free to air broadcasters have had a reasonable opportunity to acquire the free to air rights. These antisiphoning rules, in turn, deliver a substantial market advantage to the existing broadcasters.

- Television broadcasters are required to simulcast their analogue services in standard definition and for 1040 hours per year in high definition digital format. Standard definition has been considered satisfactory in other countries. Broadcasters are also required to simulcast both analogue and digital signals until the end of the simulcast period, 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.

[2] Multichannelling is the transmission of more than one stream of programming over a television channel.

- Through program restrictions, the legislation restricts the ability of datacasters[3] 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 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).

The 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 (now the Australian Communications and Media 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 commission recommended removing the restrictions that prevent new broadcasters from entering the market before the end of 2006.

The government has made only limited responses to the inquiry report. The Australian Government Department of Communications, Information Technology and the Arts (DCITA) 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 2004, the government extended the antisiphoning scheme until 31 December 2010 while updating the list of events covered by the scheme (via the Broadcasting Services (Events) Notice (No. 1) 2004). The Broadcasting Services Amendment (Anti-Siphoning) Act 2005 received royal assent on 1 April 2005. The Act extended the automatic delisting period under the antisiphoning scheme from six to twelve weeks, providing greater flexibility for subscription television services and content rights holders.

In May 2004, the government announced that it would conduct several reviews required under the Broadcasting Services Act.

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.

[3] A datacasting service delivers content as text, data, speech, music or other sounds and visual images.

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 released four issues papers relating to these reviews in mid-2004 and sought submissions. (It is yet to release the outcome of the reviews.)

The Government also commenced a review of high definition digital television requirements in May 2005. A review of the duration of the digital simulcast period is to be conducted by early 2006.

The Productivity Commission's final inquiry report on its review of NCP reforms, released on 14 April 2005, recommends that high priority should be accorded to removing the restrictions on the number of free-to-air television licences, multichannelling and datacasting, unless the government's current reviews 'provide a compelling case to the contrary. 'The commission recommended that these measures should be implemented as package (PC 2005a, pp. 236–7).

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 that 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 and Media 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 commission highlighted the need for the scarce spectrum resource to be used efficiently and in ways that do not restrict competition (PC 2002, pp. xxxi–xxxii). 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, nine require legislative action to amend the Act. Drafting the legislative changes started in early 2004, and the government expects Parliament will consider an amendment Bill during the sittings of late 2005 or earlier 2006.

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

The Australian Postal Corporation Act gives Australia Post a monopoly in:

- the collection and delivery within Australia of letters up to 250 grams and for a fee up to four times the rate of postage for a standard postal article carried by ordinary post
- the delivery of incoming international mail.

Australia Post is required to make the standard letter service available at a single uniform rate of postage for all Australians. It funds this community (sometimes known as universal) service obligation (CSO) 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 CSO 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 CSO and post office box services (NCC 1998b).

In July 1998, the government announced that it would reduce the scope of Australia Post's monopoly. The Postal Services Legislation Amendment Bill 2000 was introduced to Parliament in April 2000. This would have allowed competition in the delivery of incoming international mail and in the collection and delivery of domestic letters above 50 grams and above the standard letter postage rate. It would have also established a postal services access regime 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 Communications and Media Authority to cost Australia Post's CSOs and report on Australia Post's quality of service and compliance with service standards

- the introduction of accounting transparency for Australia Post (by giving the ACCC 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

- clarification of the legality 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 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.

In the 2004 NCP assessment, the Council concluded that the government had not met its CPA obligations in this area because the reforms fell short of addressing the recommendations of the NCP review (in particular, the recommendation to allow competition in the delivery of incoming international mail and the delivery of domestic business mail).

The government has since introduced the Postal Industry Ombudsman Bill 2004 to Parliament, on 17 November 2004. The Bill would establish a Postal Industry Ombudsman within the office of the Commonwealth Ombudsman, to deal with complaints from consumers and small business about the provision of postal services. The new ombudsman would have jurisdiction over Australia Post and any other postal operators who elect to 'opt into' the ombudsman scheme. The Bill was passed in the House of Representatives on 8 September 2005, and has been returned to the Senate.

Given that the key restrictions remain unreformed, the Council confirms its previous assessments that the Australian Government has not met its CPA obligations in this area.

L Barrier assistance

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 (TCF SIP), which provides grants for eligible investment in new and second-hand plant and equipment, research and development, product and process innovation, value-added and ancillary activities related to restructuring. (From 1 July 2005, this will be replaced by the Textiles, Clothing and Footwear Post-2005 Strategic Investment Program Scheme.)

- the setting of tariffs for TCF products at 2001 levels until 2005. From January 2005 the tariffs will be reduced and held at that level until 2010 at which time TCF tariffs above five 5 per cent will be reduced again and held until 2015 at which time they will reduce to five per cent.

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 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. 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.

The *Customs Tariff Amendment (Textile, Clothing and Footwear post-2005 Arrangements) Act 2004,* which set tariffs in line with recommendations of the review came into effect on 14 December 2004. The Council assesses that the Australian Government has met its CPA obligations in this area.

Customs 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 Australian Government has not finalised the timing of the review of the *Customs Act 1901,* part XVB, and the *Customs Tariff (Anti-dumping) Act 1975.* The Productivity Commission's recent report *Review of National Competition Policy reforms* recommended that the government initiate the scheduled review as soon as is practicable (PC 2005a, p. xlviii).

In its 2004 NCP assessment, the Council assessed the Australian Government had not met its CPA obligations in this area. Reflecting the subsequent lack of progress, the Council reconfirms that assessment.

Non-priority legislation

Table 10.1 provides details on non-priority legislation for which the Council considers that the Australian Government's review and reform activity does not comply with its CPA clause 5 obligations.

Table 10.1: Noncomplying review and reform of Australian Government non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Aboriginal and Torres Strait Islander Heritage Protection Act 1984	Preserves areas and objects of particular significance to indigenous Australians under their indigenous traditions when these are not effectively protected under relevant state or territory laws.	Evatt review (1996) recommended national standards to protect Indigenous heritage and promote negotiated outcomes.	The amending legislation lapsed. The government is consulting with stakeholders with a view to replace the current Act.
Bills of Exchange Act 1909	Aims to provide uniformity of law across Australia in relation to bills of exchange and promissory notes.	The report of the review, by a taskforce of officials, was released in 2003.	Treasury has undertaken consultations with industry.
Commerce (Imports) Regulations and *Commerce (Trade Descriptions)Act 1905*	Regulates the description of goods on labels or other markings applied to imported and exported goods.	Review completed in 2002, recommending retention of the Commerce (Trade Descriptions) Act and repeal of the Commerce (Imports) Regulations.	The government is considering its response to the recommendations.
Financial Transactions Reports Act 1988	Seeks to facilitate the administration and enforcement of taxation (and certain other) laws.	Review recommended amendments that have been the subject of consultation.	Recommendations are part of Australia's wider consideration of implementing international standards on anti-money laundering and counter-terrorist financing standards. The Government endorsed the international standards in December 2003, necessitating a review of Australia's anti-money laundering system and new measures intended to address terrorism financing. New legislation is expected to be introduced to Parliament in mid-2006.
Mutual Recognition Act 1992		National review completed in July 1998. The review was conducted by a working group of the COAG Committee on Regulatory Reform (CRR). The report is available at www.pmc.gov.au. The review found that the scheme is generally working well to minimise the impediments to freedom of trade in goods and services.	COAG's Committee for Regulatory Reform prepared a report for consideration by COAG (and the New Zealand Government). COAG's decision will determine whether jurisdictions, including the ACT, will have to make legislative changes.

(continued)

Table 10.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Petroleum Retail Marketing Franchise Act 1980 *Petroleum Retail Marketing Sites Act 1980*		The review has not commenced.	Both Acts will be repealed as part of the implementation of the Downstream Petroleum Reform Package (Oilcode).
Trade Practices Act 1974 (s51(2) and s51(3) exemption provisions)	Provides for exemptions for a number of activities relating to intellectual property rights, employment regulations, export arrangements and approved standards from many of the competition laws contained within part IV of the Trade Practices Act.	Review completed in 1999. The provisions are the subject of a further review by the Intellectual Property and Competition Review Committee (the Ergas Committee), which forwarded its final report to the Australian Government in September 2000.	The Australian Government is considering its response to the review of s 51(2) of the TPA. On 28 August 2001, the Government announced changes to s 51(3) of the Act in its response to the Ergas report, which also examined s 51(3). The government intends to amend the Act by applying modified competitive conduct rules in part IV (restrictive trade practices) to intellectual property licensing transactions, and to exempt the *Plant Breeders' Rights Act 1994* (Cwlth) from the modified conduct rules.
Veterans' Entitlement Act 1986—Treatment Principles (s90) and Repatriation Private Patient Principles (s90A)		The Government is examining whether a review of the two sets of principles is required.	

11 New South Wales

A1 Agricultural commodities[1]

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 New South Wales Government representatives and four industry representatives completed a National Competition Policy (NCP) 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 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.

The National Competition Council found in 2002 that New South Wales had not shown that retaining some competition restrictions in grain marketing until 30 September 2005 was in the public interest. In particular, given the lack of evidence for premiums from restricting export marketing and in the aftermath of the board collapse, the Council considered that the government could have authorised the entry of other grain marketers and collected from them a levy to fund the payout to growers of the 1999-2000 pools. (For a full discussion of this evidence, see NCC 2003a).

The government subsequently explored the feasibility of bringing forwards the sunsetting of the remaining restrictions, but reported in June 2003 that it could not do so because the restrictions were subject to a court-ordered Scheme of Arrangement and binding deeds of agreement between Grainco Australia, the administrator of the board and the government.

---

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

The holder of the exclusive licence, Grainco Australia, merged with GrainCorp Ltd in October 2003. The combined entity, also known as GrainCorp Ltd, has aided the transition to a deregulated environment post-September 2005 by allowing other parties to export canola and sorghum in 2003-04 and to trade malting barley domestically in 2004-05 for a fee of $5 per tonne.

For the 2004 NCP assessment, the Council accepted that the government could not bring forwards the expiry of remaining restrictions on grain marketing from September 2005, but nonetheless retained its 2002 assessment finding that the state had not met its Competition Principles Agreement (CPA) clause 5 obligation. For this 2005 assessment, the Council considers that it is now appropriate, in light of the imminent expiration of the remaining restrictions, to assess New South Wales as having met its CPA obligations in relation to grain marketing.

Poultry Meat Industry Act 1986

The Poultry Meat Industry Act prohibited the processing of poultry unless grown under a contract approved by the Poultry Meat Industry Committee (a committee of grower, processor and independent members) or grown at a processor's own farm. The committee also determined the fee paid by processors to growers for the supply of growing services.

In its 2003 NCP assessment the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act because, notwithstanding two reviews and some reforms, it had retained the key restrictions on competition without demonstrating that those restrictions are in the public interest. The Council consequently recommended that the Australian Government Treasurer deduct 5 per cent of the 2003-04 competition payments to New South Wales.

In 2004, the government commissioned a further review of the Act by consultants Ridge Partners. The Council endorsed this action in the 2004 NCP assessment and recommended a specific suspension of 5 per cent of 2004-05 competition payments recoverable on the completion of an appropriate review of the Act and, where necessary, timely implementation of NCP compliant reforms.

Reporting in October 2004, the review recommended that the government adopt new regulatory arrangements that avoid the use of centralised compulsory price fixing and contract approval. In May 2005, the government introduced the Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill 2005. Passed on 22 June 2005 the legislation removes the key restrictions on competition and instead:

- requires contracts to address matters identified in regulation, which will also set out standard (or default) provisions for such matters, but allow contracts to use alternative provisions to the same or other effect

- requires processors to notify the Director-General of Primary Industries of new contracts with growers, but does not require processors to provide a copy of such contracts (or obtain approval)

- re-establishes the Poultry Meat Industry Committee, composed of three independent persons (that is, without industry representatives), with the functions of:

  – preparing voluntary codes of practices for bargaining, and guidelines for the content of agreements

  – making recommendations to the minister on matters that agreements should be required to address and related standard provisions

  – facilitating the resolution of disputes between a processor and its growers

  – inquiring into, and advising the minister on industry matters

- establishes a Poultry Meat Industry Advisory Group, composed of processor and grower representatives plus an independent chair, which the committee is obliged to consult.

New regulations will, in addition to setting out optional model contract terms, allow the committee to mediate and, where mediation fails, arbitrate in contract disputes, but will not give the committee the power to arbitrate on price matters, and disputing parties will be free to choose alternative dispute resolution providers and procedures.

The government intends the legislative amendments to commence as soon as possible, while retaining the existing protection on growing fees until 31 December 2005, and for the full regulatory system to be in place by 1 January 2006.

The Council is satisfied that these legislative changes constitute a firm transitional arrangement that is in the public interest and, hence, it assesses that New South Wales has met its CPA clause 5 obligations arising from the Poultry Meat Industry 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 by Regulations and Proclamations made under the Marketing of Primary Products Act. No-one other than the board and its agents may market New South Wales grown rice, either domestically or on export markets. The board delegates its marketing functions to the grower owned Ricegrowers Co-operative Limited, which trades under the name SunRice, under an exclusive licensing arrangement. SunRice also controls the storage and processing of rice.

A group of government and industry representatives completed an NCP review of these arrangements in November 1995. The review concluded that the benefits of the export arrangements significantly exceeded the costs borne by domestic consumers and the economy. It recommended removing the monopoly over domestic marketing, but retaining the export monopoly, to reduce the domestic costs while retaining export related benefits. It proposed that the government apply to the Australian Government to establish a rice export licensing arrangement or, failing that, establish a state-based arrangement to secure a single export desk while deregulating the domestic market.

In its 1997 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to these arrangements, because the domestic marketing monopoly remained in place.

Subsequently the New South Wales and Australian governments examined options for retaining a single export desk under Australian Government jurisdiction while removing the domestic rice market monopoly. However, in December 2003, following consultations with other states, the Australian Government formally advised New South Wales that it would not establish a single Australian rice export desk.

In March 2004, New South Wales notified the Council that it would commission a new NCP review of the rice marketing restrictions. In its 2004 NCP assessment, the Council endorsed this action and recommended a specific suspension of 5 per cent of 2004-05 competition payments recoverable on the completion of an appropriate review of the restrictions and, where necessary, timely implementation of NCP compliant reforms.

A more detailed schedule of events over the almost ten years from November 1995 to June 2005 is presented in box 11.1.

2005 Review

The new NCP review was completed in April 2005 by Integrated Marketing Communications P/L for the Department of Primary Industries. According to the report, which is available to the public on request, the review estimated a net public benefit from the restrictions of $46.5 million per year, and found no feasible alternative to vesting. It recommended the government retain both the export and domestic monopolies. It also recommended improving the accountability of the board to government (particularly in assessing the performance of SunRice) and improving price signals to growers. The government has accepted the recommendations of the review.

The review's evaluation of benefits and costs relied substantially on a joint submission by the board, SunRice and the Ricegrowers Association. The report broadly discusses the submission but generally gives insufficient details about the evidence therein.

Box 11.1: Progress in implementing the domestic rice market reforms recommended a decade ago

November 1995: NCP review recommends deregulation of the domestic rice market from 31 January 1999 while retaining the single desk for rice exports, preferably via Commonwealth regulation. If the single desk cannot be established under Commonwealth regulation, the review recommends that *'the NSW Government agree to provide a state based regime to secure single desk export selling for the NSW rice industry from 1 February 1999, whether by way on an attenuated vesting arrangement or otherwise, but which has minimal anti-competitive effects'.*

June 1997: In its first assessment the Council finds that NSW has not met its NCP obligations, but agrees to reassess progress after NSW undertakes to work with the Council to resolve the matter.

December 1997: NSW extends domestic rice marketing arrangements until 2004.

June 1998: The Council recommends a $10 million reduction to NSW's competition payments.

July 1998: The Council meets rice industry officials to explore a model for domestic market reform.

December 1998: A rice working group is established by the Australian Government Treasurer to examine options for a rice export single desk under Commonwealth jurisdiction.

January 1999: The working group recommends a model for a rice export single desk under Commonwealth jurisdiction.

April 1999: NSW agrees to the proposed model subject to the arrangements not putting export premiums at risk and all other states agreeing with the proposal.

June 1999: The Council states it is satisfied that the in-principle agreement by NSW meets the state's NCP obligations.

August 2000: By the time of the Council's 2000 supplementary assessment, NSW has not responded to a revised proposal from the Australian Government, so the Council recommends withholding part of the state's competition payments. NSW accepts the revised proposal and the Council withdraws its adverse payment recommendation.

March 2001: NSW agrees to the Australian Government consulting with other states and territories on the reform model.

November 2003: NSW introduces legislation to extend the rice vesting arrangements until 2009, stating that the Australian Government's consultations with other jurisdictions have been abandoned. NSW commits to re-reviewing the rice vesting arrangements.

December 2003: The Australian Government confirms that it will not establish a single rice export desk.

March 2004: NSW confirms that it will commence a new independent NCP review of the rice marketing arrangements.

October 2004: The Council recommends a specific suspension of 5 per cent of NSW's 2004-05 competition payments, recoverable on the completion of an appropriate review and, where necessary, the timely implementation of NCP compliant reforms.

December 2004: The Australian Government accepts the Council's recommendation for a specific suspension.

June 2005: NSW provides the Council with a copy of the NCP review report.

For instance, according to the report SunRice calculates that it earns an export premium of around $30 million per annum—that is SunRice receives around $30 million per annum more than it would if it received only world rice prices. The report describes in general terms how this was calculated and emphasises that the review team had access to the source data and calculations. The report accepts that, based on other research commissioned by SunRice in 2001, around 50 per cent of this premium—$15 million—is attributable to the single desk, rather than other factors such as packaging, branding and customer support services.

Estimating the gains (and losses) from price discrimination between markets requires sophisticated econometric modelling. There are several methodologies and the results can vary widely depending on the assumptions made. A sophisticated analysis will test for the effect of uncertainty, as single desk operators cannot have perfect information about demand elasticities and competitors' supply elasticities in all their markets, and will therefore make errors in attempting to divert supply from price insensitive markets to price sensitive markets, resulting in lower returns than might be possible with perfect information. The report is silent on the methodology and assumptions used by the research for SunRice, and on the credentials of whoever undertook it.

Similarly, the review attributes a $15 million benefit to the single desk arising from SunRice's lower seafreight costs to its key markets compared with those faced by its United States and Thailand competitors, but provides little explanation of how this benefit was estimated, other than noting the industry submission estimated a $30 million benefit but that some of this is due to a transient rise in freight rates and that only some of the remainder would be competed away under deregulation.

The review estimates an $18 million benefit of vesting arising from economies of scale in SunRice's rice milling operations. Again, apart from noting that this is based on the operating cost of a new mill and the cost to SunRice of processing 20 per cent less rice, the report presents little information on how this benefit was estimated. Moreover, it is by no means clear that SunRice's processing throughput would fall as much. Were the government to retain an export single desk while allowing domestic market competition, SunRice would retain at least the average 85 per cent of production that is exported and very likely a substantial share of rice production destined for the domestic market. Even with full deregulation, to the extent that significant scale economies exist as the review contends, SunRice could offer better returns to growers than new entrants, and thereby could generally be expected to retain a substantial processing throughput.

Overall, the report gives insufficient information to be confident that the research commissioned by SunRice has met satisfactory standards of rigour and objectivity.

The report also finds that the current statutory arrangements provide for better environmental outcomes and for more effective research and development than would be the case in an unregulated scenario, but fails to

present any supporting evidence, that is, an analysis of alternative mechanisms to achieve these objectives and experience with them from other agricultural industries.

The report finds that the domestic costs of restricting competition—such as welfare losses associated with higher domestic rice prices, the pooling of grower returns as well as bundling of returns on supply-chain investment—are $1.5 million per annum. This finding was based principally on analysis for the 1995 review by the then Department of Agriculture. But part of this analysis—an estimated $150 000 per annum loss arising from pooling—appears outdated when, as the report notes, a significant share of SunRice's payments to growers per tonne delivered now arises from non-core business activities.

The report also fails to recognise important matters, such as:

- Pooling of rice sales proceeds imposes certain risks on growers. For instance, growers have no opportunity to lay-off price risk by selling some or their entire crop for a cash price. Growers also cannot avoid exposure to the business risks of SunRice such as the risk that SunRice underperforms financially, perhaps due to changes in market circumstances or failed value-adding investments, or even that it could fail, as some statutory marketers have done in the past. Some growers are likely to prefer not to accept such risks if they had the choice. The report does not discuss this issue.

- According to the report SunRice is likely to generate premiums as a result of exercising market power principally in pacific island nations. In these markets, for instance SunRice's largest export market—Papua New Guinea, SunRice supplies 80 to 100 per cent of rice consumption, and is able to hold prices above their competitive level to the cost of pacific island consumers.[2] Australia has a longstanding foreign policy objective of improving the economic and social development of pacific island nations and accordingly the Australian community provides substantial official development assistance to this end. Consequently the community might attach a lesser weight to the additional funds generated by a statutory intervention in these markets than it might in other markets. The report does not recognise this possibility.

Lastly, the report states a preference for a deregulated domestic market with a single export desk, but contends that 'there is arguably no feasible failsafe mechanism … to protect these benefits other than through a national single desk, an approach previously ruled out'. This finding, which goes to the heart of the second leg of the CPA clause 5(1) test—that the objectives of the legislation cannot be achieved without restricting competition—was not evidenced by any exploration of alternatives, in particular relevant experience from the domestic deregulation of barley in South Australia and

[2] SunRice's exports to pacific island nations accounts for 20 to 25 per cent of the State's rice crop.

Western Australia, Graincorp's authorisation of canola and sorghum buyers in New South Wales or the sugar vesting exemptions administered by the Sugar Industry Authority in Queensland. All of these arrangements provide for a continuation of single desk arrangements for exports coincident with domestic deregulation. The Council considers that it was incumbent on the review to assess whether the state could liberalise domestic rice marketing by exempting from vesting, rice sold domestically, on conditions that protect the Board's export monopoly.

An option that should have been explored is to restrict who may buy rice from growers to those buyers authorised by a suitably reconstituted marketing board. Such authorisation could be conditional on these buyers accepting a contract that prohibits the export of this rice unless it has been substantially transformed, and that prohibits that sale of this rice domestically unless under a contract that prohibits exporting by the next buyer, and so on, in a similar manner to the distribution and resale restrictions that often imposed in other industry sectors. Normal commercial sanctions, such as contract termination and litigation, would be available to the board and, in turn, authorised buyers in the event of any breach of these conditions. The board's costs of administering and enforcing these arrangements could be recovered from authorised buyers.

In September 2005 the New South Wales Government provided supplementary analysis to the Council which noted:

> *In theory,…. 'Authorised Buyers' could be regulated such that they are free to trade rice on the domestic market, but are not permitted to export rice nor to on-sell to an exporter unless they are authorised to do so by the operator of the single desk. This would impose fewer restrictions on competition in the domestic market and, hence less efficiency costs on the economy.*

It quickly dismissed such an approach on the grounds that 'there is nothing to prevent an Authorised Buyer legally selling rice to a company in another state who is then outside the jurisdiction of the NSW legislation'. However it did not explore these limitations in any detail, nor did it examine alternatives—such as the contractual model set out above—to address the perceived difficulties.

Following further discussions on 14 October 2005 the Minister for Primary Industries, Mr Macdonald MLC, notified the Council that the New South Wales Government had agreed to reform regulation of the market for domestic trade in rice in New South Wales, proposing to introduce in 2006 an authorised buyer scheme, while retaining a single desk in relation to exporting of rice. Applicants for an authorisation will face minimum qualifying criteria but may lose their authorisation for a period if they breach its conditions, including by exporting rice. The scheme will be administered by the Rice Marketing Board subject to review by the Administrative Decisions Tribunal.

Assessment

As noted above the Council has important reservations about the New South Wales 2005 NCP review and specifically the evidence it presented that a monopoly on the marketing of New South Wales grown rice is in the public interest. The review was compromised, at least in part by the government making available insufficient resources for the review to either conduct its own econometric analysis or to retain recognised expertise to rigorously and transparently test the analysis submitted in the joint industry submission on which the review largely relied.[3] The Council voiced concern about this reliance at the outset of the review process but the reviewer gave assurances that the industry analysis would be adequately tested. As noted above, the report does not give the Council any confidence that this happened. (Moreover, the Council's confidence in the independence of this review was undermined when it learned—subsequent to the review—that the economic expertise was provided by a person previously employed with the Grains Council of Australia and responsible for advocating the Grains Council's longstanding policy opposing competition in the export of grain.) Notwithstanding these reservations the Council has come to the view that, for the moment and on the balance of probabilities, retaining an export monopoly is likely in the public interest.

The Council acknowledges the statement by the Minister that the New South Wales Government will allow competition in the domestic marketing of New South Wales-grown rice. This decision has however been too long in coming – it is ten years since the first NCP review recommended removing restrictions on the domestic market for rice – and the delay has denied growers, particularly those who wish to produce a specialty product such as organic rice, the opportunity to take more control of their business. Nevertheless the Council believes the government's scheme is a workable approach that will release the benefits of competition and innovation in the domestic market while safeguarding to a satisfactory degree the benefits that the export single desk may capture.

Consequently the Council assesses that New South Wales will have met its CPA clause 5 obligations arising from restrictions on rice marketing when it has passed legislation to give effect to the authorised buyer scheme proposed by the Minister for Primary Industries.

The Minister has undertaken that such legislation will be enacted by the New South Wales Parliament before 30 November 2005. If that does not occur, competition payment deductions should be imposed as recommended in the overview section of this report.

---

[3] Similar to the approach of South Australia's 2003 NCP review of its Barley Marketing Act where the review panel employed a recognised academic expert to test analysis submitted by ABB Grain Ltd.

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 (agvet) 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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

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, agvet 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 agvet 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 in 1999. The Council's 2004 NCP assessment identified advertising restrictions in the Stock Medicines Act as the only significant outstanding matter for New South Wales. The *Stock Medicines Amendment Act 2004*, which repeals those advertising restrictions and implements operational improvements to the Act, was assented to on 30 November 2004. New South Wales advised that the amendments will commence once the relevant Australian Government legislation is amended to include controls on prescription-only stock medicines in accordance with the national Galbally review (see chapter 19) of drugs, poisons and controlled substances.

Although reforms have not commenced to operate due to factors beyond the control of the New South Wales Government, the Council must assess that the state has not met its CPA obligations in relation to this legislation.

A8 Veterinary services

Veterinary Surgeons Act 1986

New South Wales licensed veterinary surgeons and controlled the practice of veterinary surgery in the Veterinary Surgeons Act. An NCP review of the Act in 1998 recommended several reforms, and these were implemented in December 2003 via passage of the Veterinary Practice Bill 2003. The new Act continues to restrict ownership of veterinary practices: while it allows veterinary practices to take any form of business arrangement, one or more veterinary surgeons must hold the majority ownership. Agribusinesses are permitted to provide a limited range of veterinary clinical services, but not veterinary hospital services.

The Council sought from New South Wales, the public interest reasons for retaining partial ownership restrictions. New South Wales reported that 'the NCP review of the Act 'did not arrive at a unanimous position in relation to ownership restrictions' (Government of New South Wales, 2005, p. 16), although it posited some rationales for ownership restrictions including:

- a perception that non-veterinary owners were more likely to be driven by commercial considerations than registered veterinarians and hence be more likely to engage in 'cutting corners', over-servicing and exploiting the bond between owners and their animals

- perceived parallels with pharmacy regulation in that veterinarians, like pharmacists, dispense scheduled drugs so that public interest arguments for pharmacy ownership restrictions equally apply to veterinary practices.

The Council considers that a perception that non-veterinary owners of practices are more prone to unscrupulous behaviour does not constitute a public interest case for ownership restrictions. Moreover, other jurisdictions have removed ownership restrictions, having found feasible alternative measures to address the risk that non-veterinarian owners (who are not registered under the Act) may induce veterinarian employees to compromise professional standards. Making it an offence for a person to direct a veterinarian to practise in an unprofessional manner, for example, is one approach adopted to address these concerns in a way that does not restrict competition. The government also contended that the threat of deregistration against practitioners is more effective than civil or criminal action against non-veterinarian business owners. Again, however, it did not substantiate this claim—for instance, with experience from other professions and jurisdictions.

The argument that the public interest case for ownership of pharmacies is applicable to veterinary practices is not compelling. The outcome of the national review of pharmacy (the Wilkinson review and subsequent COAG working group report) was only that ownership restrictions be retained as a transitional measure given other significant proposed reforms. While there is a public interest case for requiring that pharmacists (and veterinarians) dispense scheduled drugs, this does not extend to owning the business.

In the 2004 NCP assessment the Council found that New South Wales had not met its CPA clause 5 obligations because it had retained a restriction on practice ownership and also had delayed commencement of the exemption for agribusinesses. The exemption of agribusinesses that provide limited veterinary services from the ownership restriction commenced in May 2005. The restriction on practice ownership otherwise remains however.

The Council recognises that New South Wales' reforms have resulted in a marked relaxation of the ownership restrictions and that the remaining restrictions are not particularly onerous given they allow for a mix of business and technical skills in veterinary practices. The exemption for agribusinesses is a further important reform initiative. Nevertheless, as the government has not shown there are no feasible alternatives to restricting veterinary practice ownership, the Council assesses that New South Wales has not met its CPA obligations in this area.

B1 Taxis and hire cars

Passenger Transport Act 1990 (taxis)

The Independent Pricing and Regulatory Tribunal (IPART) completed the NCP review of the Passenger Transport Act in November 1999. It 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 New South Wales Government did not introduce the recommended reform program. It informed the Council in September 2004 that the Ministry of Transport issued 45 new perpetual licences in 2000, 107 in 2001, 13 in 2002 and 77 in 2003, and also that 200–300 short term and wheelchair accessible taxi licences were issued in each of these years. These data appear inconsistent with the findings of the recent interim report of the ministerial inquiry into the taxi industry, released in September 2004, which commented on the status of the implementation of the IPART recommendation to

increase the number of Sydney taxi licences by 5 per cent per year for five years. The interim report stated that:

> *[The IPART recommendation] was estimated to have increased the number of Sydney taxis by 1268 and was not implemented. However, 60 unrestricted short-term licences were issued in 2000, Wheelchair Accessible Taxi (WAT) restricted licences have been issued on request for some time and continue to be so issued* (Ministry of Transport 2004, appendix B)

The Government also instituted other reforms to overcome problems with service standards. These included:

- allowing holders of perpetual hire car licences to surrender them for equity in taxi plates
- introducing fines of $1100 for taxi drivers who use trunk radios—some taxi drivers had used these radios to share jobs involving passengers who had phoned them directly rather than through radio networks
- conducting a trial whereby taxi drivers would not learn the passenger's destination until the passenger had entered the taxi.

The inquiry interim report recommended that the ban on trunk radios and the 'no destination' trial should cease. The Minister for Transport Services subsequently announced that the government accepted these recommendations with immediate effect.

In its 2004 NCP annual report, New South Wales offered to undertake another independent review of the Passenger Transport Act if requested by the Council. This offer arose from New South Wales' contention that the 1999 IPART review had erroneously assumed that there was a quantitative barrier to entry to the taxi sector, whereas new licences are available on demand at market prices, albeit at the discretion of the Ministry of Transport.

Given the government's concerns about the IPART review, the Council indicated in the 2004 NCP assessment that another independent review of this legislation would have merit. It stated that such a review should thoroughly address the extent to which the regulatory arrangements for taxis constitute a restriction on competition and the nature of any remedying reform package.

In April 2005, the Ministry of Transport commissioned another review of the Passenger Transport Act, as the Act relates to taxi services. The review was conducted by Hawkless Consulting, with terms of reference that reflect NCP principles. The government provided a copy of the report to the Council on a confidential basis.

The report makes clear that the Act does not limit the number of taxi licences. However, there is market differentiation between 'perpetual' licences (which are no longer issued) and current licences on offer (ordinary

and short term). Only perpetual licences are traded, and this creates a barrier to entry, because uptake of new licences is deterred by the excessive prices set by the Ministry of Transport for these licences, which the market regards as inferior substitutes. The review lists reform options, and the government is considering the outcome of the review.

Given that review and reform of the legislation is incomplete, the Council assesses that New South Wales has not met its CPA clause 5 obligations in this area.

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 completed in March 2004 and considered the competition impacts of the Act. It concluded that tow truck licensing arrangements in New South Wales provide a net public benefit and 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.) The review also recommended amendments to 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.

Clause 69(2) of the Regulations was amended on 20 April 2005 to provide that an interstate operator/driver who is registered with the Tow Truck Authority under the *Mutual Recognition (NSW) Act 1992* and undertakes work originating in New South Wales is exempt from the licensing requirements.

The Council considers that New South Wales has met its CPA clause 5 obligations in relation to tow truck legislation.

C1 Health professions

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 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. Further, the RIS contains only some limited analysis of the benefits of infection control. In particular, it is not clear why employers of persons engaged in dental work, such as dental laboratories, cannot manage infection control, given that they may be liable for the negligent actions of their employees. The RIS also considers the Regulation's costs only 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.

The Council accepts that there may be some public interest arguments for regulating dental technicians, in light of the potential health risks. However, without a robust public interest case for retaining the restriction in the enabling legislation, it is not clear that risks to the public are significant.

In its 2005 NCP annual report, New South Wales advised that the Minister for Health expects to bring forward a proposal to repeal the Act in the near future. Nevertheless, the Council assesses that New South Wales has not met its CPA clause 5 obligations in relation to this profession because it has not repealed the legislation or provided a public interest case for rejecting the review's recommendations.

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 an individual pharmacist may own
- permit friendly societies to own and operate up to six pharmacies (Howard 2004).

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 would also increase restrictions on competition, rather than removing them, by limiting 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.[4]

---

[4] In 2005, the Council became aware that the Pharmacy (General) Regulation 1998 imposes restrictions on the relocation of certain 'grandfathered' pharmacies. On 9 June 2005, it wrote to New South Wales to seek clarification. New South Wales responded on 5 July 2005 to advise the Council that the government amended the

Given that New South Wales has not implemented reforms to pharmacy regulation consistent with COAG requirements, the Council reaffirms its assessment that the state has failed to meet its CPA obligations in relation to pharmacy legislation.

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 introduced further legislation in 2004 to implement the outcomes of the national model laws (see chapter 19). The *Legal Professions Act 2004* received assent on 21 December 2004.

The state's outstanding legal profession reform obligation—from a competition policy perspective—relates to professional indemnity insurance. New South Wales is considering insurance arrangements in the context of the national processes (see chapter 19).

Given that the professional indemnity insurance matter is still outstanding, the Council assesses that New South Wales has not met its CPA clause 5 obligations in relation to the review and reform of its legal profession legislation.

E Other professions

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 progress in implementing reforms was delayed by the need to finalise issues at the national level, including the review of contribution arrangements for the Travel Compensation Fund and the fund's prudential

regulation on 17 June 2005 to provide more flexibility for affected pharmacies to relocate. Those 'grandfathered' pharmacies originally located in Sydney, Newcastle and the Central Coast, or Wollongong can now relocate to other premises within their respective areas. In all other areas, those pharmacies can relocate to any premises with 16 kilometres of their original location.

and reporting requirements, and the review of qualification requirements to ensure uniformity across jurisdictions.

A joint working party considered the Travel Compensation Fund's premium structure and prudential and reporting requirements, and reported to the Ministerial Council on Consumer Affairs that no changes are required. The ministerial council accepted that assessment, and the review of the operation of the Travel Compensation Fund is now complete.

The following occurred in relation to the remaining recommendations of the broader review of the travel agents legislation:

- On 8 April 2005, the Travel Agents Amendment (Qualifications) Regulation 2005 commenced, amending the Travel Agents Regulation 2001 to implement in New South Wales the uniform qualification requirements endorsed by the ministerial council.

- The review recommended increasing the current licence exemption threshold to $50 000. This recommendation was implemented by Ministerial Order made under s5 of the Travel Agents Act, effective 8 April 2005.

The Ministerial Council on Consumer Affairs recommended removing the exemption from the Act for Crown-owned business entities. New South Wales has not implemented this recommendation because it considered that the recommendation was based on an erroneous assumption regarding the principles of competitive neutrality. It argued that the underlying principle of competitive neutrality is to seek to eliminate resource allocation distortions that may arise from government businesses enjoying a net competitive advantage simply as a result of their public sector ownership. It considered, however, that the review erroneously interpreted this principle to require government businesses to face the same regulatory environment as that of their private sector competitors.

New South Wales stated that CPA clause 3(4)(b)(iii) while requiring jurisdictions to impose on government businesses those regulations to which the private sector is normally subject, is an obligation that extends only to those significant government business enterprises which are classified as 'Public Trading Enterprises' and 'Public Financial Enterprises' This interpretation narrowly defines the coverage of this CPA requirement.

New South Wales argued that the ministerial council's recommendation, on the other hand, would result in very broad coverage. Removal of the current exemption for Crown owned business entities, combined with the function based definition of 'travel agent' maintained in the Act, would result in all ministers, government departments, administrative offices, statutory corporations, prescribed public statutory authorities and their employees potentially being required to be licensed as a travel agent. Most of these are not significant government businesses, or necessarily public trading or financial enterprises. In New South Wales' view the recommendation thus

represents an erroneous interpretation of the requirements of competitive neutrality policy.

A central objective of the licensing of travel agents is to provide for contributions to the Travel Compensation Fund which compensates consumers who suffer financial loss as a result of private sector insolvency. New South Wales considered that it would not be appropriate for public sector agencies, which do not share the bankruptcy risk profile of private sector providers, to have to contribute to the fund. The resulting cross-subsidisation from low risk public providers to higher risk private providers would more likely exacerbate any misallocation of resources, rather than work to minimise it, and thus would undermine the principal objective of competitive neutrality policy.

The Council accepts that New South Wales is not obliged to require all government businesses to face the same regulatory environment as that of their private sector competitors. It also accepts that the objectives of competitive neutrality policy may not be served by requiring relatively low risk public sector agencies to contribute to the Travel Compensation Fund. Nevertheless, it notes that other jurisdictions have generally been able to implement the ministerial council recommendation without the adverse consequences identified by New South Wales. This suggests that there may be approaches (for example, rewording the definitions in the Travel Agents Act) that New South Wales could further explore to implement the ministerial council recommendation. However, because New South Wales has assured the Council that, to the extent its public sector agencies compete with private providers of a good or service, they are required to comply with the New South Wales competitive neutrality policy, the matter is of limited significance.

The Council assesses New South Wales as having met its CPA obligations in relation to travel agents regulation.

F1 Workers compensation insurance

Workers Compensation Act 1987

Not assessed (see chapter 9).

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 that was 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 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 (and 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*. Applicants can incur significant legal costs and face 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 against administrative decisions relating to the granting 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 the fee for a new hotel licence in 1998-99 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 is 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 of increased demands on public services.

- *The number of licence categories and the conditions attaching to each category*. The review found instances in which 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.

  - 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*. The review acknowledged that these restrictions are 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 moved within 500 metres in a metropolitan area or 5 kilometres within a regional area; where trading hours are not being extended; where licence conditions are not being varied; and where 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 licence or off-licence require the applicant to pay a fee of $6600 and to provide extensive 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 years 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 its right of appeal to the Appeals Board and the New South Wales Supreme Court. The SIA is additional 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 Act amendments remove the Liquor Administration Board's power to fix licence fees for the grant of hotel licences and off-licences, which henceforth will be prescribed in the Act's regulations and initially will be set at $2000. They also introduce annual fees for hotel licences 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 Council's 2004 NCP assessment accepted the government's position that there is a strong public interest in disassociating liquor availability from driving and, therefore, prohibiting the licensing of service stations. However, because the government's amendments commenced operation from 1 August 2004, it was difficult to assess their impact on competition in the 2004 NCP assessment. The Council has consistently supported the removal of needs tests for new licences and their replacement with a more broadly based assessment of potential harm, so it welcomed the removal of the most important restriction in the legislation. The Council also noted, however, that the new licence application procedure appeared to be significantly more complex, protracted and costly than that of other jurisdictions and that these

costs are likely to be a significant deterrent to small businesses seeking to enter packaged liquor retailing.

The Council expressed concern that New South Wales had not adopted an administrative approach to granting liquor licences as recommended by its review and as operative in all other jurisdictions. Typically under such an approach, a licensing board determines applications, having regard to potential harm via a consideration of local government and police evidence. The Council also noted that the New South Wales process appears more time consuming, imposes more onerous information requirements and has higher fees and legal costs than its Queensland counterpart, which also requires applicants to provide information concerning the public interest.

In its July 2005 supplementary report on the application of NCP, New South Wales provided additional material on the competition impact of its SIA arrangements. The report noted that approximately 18 SIA applications had been lodged under the new scheme, and given the rush of applications that occurred before the closure of the previous arrangements, that 'this would appear to be broadly consistent with trends over recent years' (Government of New South Wales 2005b, p. 9). The Council notes, however, that no new liquor licences have yet been granted under the new system

New South Wales also provided a comparison of estimated costs for an application for a hotelier's licence under the previous and new systems. Under the previous system, a licence was estimated to cost between $80 000 and approximately $200 550, whereas costs under the new system are estimated to range from $18 600 to $33 600 plus an annual licence fee of $2500. New South Wales considered that the comparison demonstrates not only a considerable reduction in application costs, but also a reduction in the potential range of costs, and that this, combined with the use of an administrative process, significantly reduces uncertainty for investors.

It should be noted that several interested parties have contacted the Council since the introduction of the SIA process, claiming that the arrangements are so onerous as to deter licence applications. Both small and large liquor retailers also claim that the costs of meeting SIA requirements (mainly holding costs on proposed premises and legal costs) are prohibitive. However, these businesses have not provided written evidence to support their claims.

The Government is preparing the draft Liquor Bill 2005 for introduction to Parliament in September 2005. The Bill will incorporate a 'plain English' rewrite of the current Act, the outcomes of the summit on alcohol abuse, the remaining reforms arising from the NCP review, and consequential amendments to around 15 other pieces of legislation. The Bill proposals include:

- extending the SIA process to applications for and removals of the range of other liquor licence categories beyond the current hoteliers and off-licence categories

- for those licences not covered by the 2004 reforms, amending the fee structure to set, in Regulations, fees that reflect the cost to government of processing an application and administering the licensing regime

- providing for all licence applications to be dealt with administratively, with the Licensing Court and Liquor Administration Board being responsible for hearing appeals and disciplinary matters

- reducing the number of licence categories from 21 to seven

- limiting the opportunity for making formal objections to licence applications because local amenity and liquor harm minimisation issues will be adequately addressed through the SIA process.

When assessing the New South Wales reforms, the Council is faced with conflicting considerations. On one hand, the outcome remains a complex and expensive process when compared to those of some other jurisdictions where considerably less onerous licensing procedures are in place without any apparent increase in alcohol related harm. On the other hand, setting potential social harm as the crucial licensing criterion is a marked advance on the previous arrangements which allowed for consideration of the impact of a new licence on the profits of incumbent licence holders. In addition, early evidence suggests the reforms do not appear to deter new licence applications.

On balance, the Council retains its 2004 NCP assessment that New South Wales has met its CPA obligations for in relation to liquor licensing. The passage of the draft Liquor Bill 2005 will not have a material impact on the earlier finding of compliance.

H3 Trade measurement legislation

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.

I3 Gambling

Gaming Machines Act 2001

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* originally regulated gaming machine activity. 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 Gaming and Racing 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. It 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 Council previously assessed the harm minimisation reforms as falling within a range of measures endorsed by the Productivity Commission and COAG, and thus meeting the CPA clause 5 guiding principle (see chapter 9). In its 2003 NCP assessment, however, the Council expressed concern regarding part 11 of the Gaming Machines Act which grants an exclusive investment licence to TAB Limited. 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. The Council considered that New South Wales did not establish a public benefit case for this exclusivity.

Tabcorp Holdings Limited acquired TAB Limited in July 2004. As a condition of that acquisition, the Act was amended to divest TAB of some of its exclusive licences, including the exclusive investment licence. While a number of hotels had entered into contracts with TAB Limited under the arrangements, all but one of these contracts had expired by the time the Act was amended. The *Gaming Machines Amendment Act 2004* repealed the exclusive investment licence provisions and included a savings provision to allow the one remaining investment licence contract to continue until its expiry date and to prevent any extension of that contract. The amending Act received assent on 15 December 2004.

The Council assesses that News South Wales has met its CPA clause 5 obligations in this area.

J1 Planning and approval

Environmental Planning and Assessment Act 1979 and planning and land use reform projects

The New South Wales Government advised the Council in December 2002 that it had not listed the Environmental Planning and Assessment Act for review under the CPA, so did not intend to report on this legislation. It stated that it would continue, however, to provide the Council with information on 30 planning and land use reform projects.[5] The Council accepted that the competition restrictions in the Act are being examined in the context of other review processes, and advised the government 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 three incomplete projects primarily relate to the streamlining of planning approval processes and review of planning standards:

1. Review referral processes and concurrences in local planning policies.

2. Examine planning prohibitions for anticompetitive effects and consider wider adoption of performance standards.

3. Consider potential for standardising consent conditions, zoning classifications and definitions of performance standards.

The government is in the process of implementing major planning reforms that will streamline and improve state, regional and local planning functions. The three projects are addressed by various components of the ongoing reform package, including:

- *The Environment Planning and Assessment (Infrastructure and Other Planning Reform) Act 2005*, was passed by Parliament on 6 June 2005 and received assent on 16 June 2005. The Act provides for a streamlined and integrated development assessment and approval system for major infrastructure and other projects of significance to New South Wales, and facilitates a strategic approach to land use planning with simplified and standardised land use planning controls under environmental planning instruments. The Act also achieves greater standardisation and consistency of local environmental plans (LEPs). Standard instruments will be prepared for environmental instruments under the new Act, initially applying to LEPs. The standard LEP template will standardise definitions, zones and key provisions of local environmental plans, and will revise zoning categories from the current 3100 to around 25, and the 1700 definitions down to fewer than 300.

---

5 Box 10.1 of the 2003 NCP assessment (NCC 2003a, p. 10.5) listed the 30 reform projects.

- The Environmental Planning and Assessment (Model Provisions) Amendment Order 2004 and the State Environmental Planning Policy (Repeal of Concurrence and Referral Provisions) 2004 came into effect on 28 February 2005. These instruments remove or amend around 1130 unnecessary and duplicative concurrence and referral requirements from State, regional and local planning instruments, resulting in quicker, simpler assessment processes.

- The New South Wales Government is also taking steps to significantly reduce the number of state, regional and local planning instruments. For example, the number of state environmental planning policies should be reduced from around 59 to fewer than 25. The number of regional environmental plans will be reduced from the current number of 44. Over the next three to five years, the state will progressively move to having one local environmental plan in each local government area. This approach will help to prevent duplication and simplify the planning approval process.

The Council considers that New South Wales has implemented its reforms. and thus assesses New South Wales as having met its CPA clause 5 obligations in this area.

Non-priority legislation

Table 11.1 provides details on non-priority legislation for which the Council considers that New South Wales' review and reform activity does not comply with its CPA clause 5 obligations.

Table 11.1: Noncomplying review and reform of New South Wales' non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (NSW) Act 1995	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the consumer credit code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation which will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.
Motor Vehicle Sports (Public Safety) Act 1985	Makes provision for the control and regulation of meetings for motor vehicle racing.	Review completed.	The government is considering its response and will introduce any legislative amendments in spring 2005..
Private Hospitals and Day Procedures Centres Act 1988	Regulated licensing and conduct.	NCP review is in final stages of completion.	The government will consider its response to the NCP review.
Public Trustee Act 1913	Constitutes a public trustee and prescribes the powers and duties of the public trustee.	Review completed.	The Parliament has twice rejected amending legislation. Alternative means to implement the review recommendations are not considered viable. New South Wales does not intend to present the legislation to Parliament for a third time.

(continued)

Table 11.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustee Companies Act 1964	Provides for restrictions, liabilities, privileges and powers of trustee companies.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

12 Victoria

A3 Fisheries[1]

Fisheries Act 1995

The Victorian Government retained ACIL Consulting to independently review the Fisheries Act. The most important recommendations of the review, which reported in 1999, were that the government:

- review alternatives to nontransferable fishing licences
- grant access licences for longer than one year
- introduce full recovery of fishery management costs and consider introducing royalties or rent taxes
- consider allocating new licences and quota by auction, tender or ballot
- remove minimum and maximum quota holding restrictions in the abalone fishery
- move from input controls to output controls (quota) in the rock lobster fishery.

The government has accepted and implemented most recommendations.

Nontransferable licences are being phased out as fishery management plans are reviewed, and guidelines have been developed for the competitive allocation of new licences. In April 2004, the government began to phase in the full recovery of fishery management costs from users. The phase-in will be completed in 2006. This year, the government has a Bill before Parliament to remove abalone quota holding and transfer restrictions.

In relation to the rock lobster fishery, the government introduced a quota management system in 2001. However, it decided to retain caps on total pots and pots per boat because it expected that allowing fishers to use more pots would increase:

- the loss of rock lobster due to more in-pot predation by octopus as the period between lifts of each pot lengthens

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

- the frequency of injury and mortality to protected species such as seals, dolphins and whales

- gear and fuel costs if fishers attempt to exclude each other from high catch rate fishing ground.

The Council accepts that removing the cap on pots per boat is likely to increase lobster stock loss, but the total allowable catch can account for this, protecting the sustainability of the fishery. Further, the cost may be offset by savings from more efficient use of labour and capital.

In relation to harm to protected species, the fishery management plan notes, 'Interaction between rock lobster fishing gear and protected species of wildlife is extremely rare in Victoria. There have been no confirmed reports of mortality of whales or dolphins attributed to rock lobster fishing gear in Victorian waters' (Fisheries Victoria 2003). The Council also understands that seal mortality due to fishing debris entanglement is unlikely to greatly affect the recovery of seal populations.

In relation to the behavioural response of fishers, the government has agreed to seek information from New Zealand, where pot caps have not been used for some years.

The Council assesses that Victoria will have fulfilled its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act when it has:

- removed quota holding and transfer restrictions in the abalone fishery

- removed pot caps in the rock lobster fishery or shown they are in the public interest.

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 Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council thus assesses that Victoria has not met its CPA obligations in relation to this legislation.

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 applied to friendly societies in Victoria, so compliance with COAG recommendations requires the state only to remove from the Pharmacists Act restrictions on the number of pharmacies.

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 to Parliament, increasing to five the number of pharmacies that a pharmacist could own. The Bill when introduced did not alter current ownership provisions in relation to friendly societies, but did tightly define a friendly society for the purposes of ownership of pharmacies. The key requirements of the new definition means that only companies that were registered or incorporated as a friendly society before 1 July 1999, have at least 100 members and operate on a not for profit basis will be able to own pharmacy businesses.

The purpose of tightening the definition of a friendly society is to prevent individuals purchasing defunct friendly societies and demutualising as a means to breach the cap on pharmacy ownership. At the time the bill was introduced there was one business that owned over 40 pharmacies that the government anticipated would not meet the requirements. The Government proposed that the pharmacy board assess each friendly society and any organisation failing the mutuality requirements be given 12 months to divest its interest or restructure.

Debate on the Bill was subsequently held over to enable the government to consider 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 government subsequently amended the Pharmacy Practice Bill 2004 to cap the number of pharmacies that a friendly society may own. The *Pharmacy Practice Act 2004*,

which implements the reforms, received royal assent on 16 November 2004. Provisions in the Act permit friendly societies that owned less than six pharmacies before 16 November 2004 to expand to six pharmacies over the subsequent four year period. Friendly societies that own more than six pharmacies will be able to increase ownership by up to 30 per cent over the same four year period. Following the four year transition period the government has proposed that it will conduct a review to determine if the caps are performing according to Victorian community standards.

The reforms implemented by Victoria in the Pharmacy Practice Act fall short of those required by COAG national review processes. While the number of pharmacies that a pharmacist can own under the Act has increased from three to five, COAG outcomes require that jurisdictions remove such restrictions. Victoria has also imposed new restrictions on friendly society pharmacies. Provisions in the Act relating to controls over the practice of pharmacy also depart from the recommendations of the COAG Senior Officials Working Group, but are consistent with Victoria's NCP obligations.

The Council assesses that Victoria has failed to meet 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 that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of COAG's endorsement.

Victoria has implemented all recommendations from the review that could be done without national cooperation and/or prior action by the Australian Government. It has amended the Drugs, Poisons and Controlled Substances Act to automatically adopt the Standard for the Uniform Scheduling of Drugs and Poisons schedules by reference, repealed the requirement for manufacturers and wholesalers to obtain licences to handle schedule 5 and 6 poisons, and implemented changes to allow the Code of Good Wholesaling Practice to be adopted when finalised. The government is developing other required reforms through it's involvement with the National Co-ordinating Committee on Therapeutic Goods (NCCTG).

The Council acknowledges that implementation of the Galbally reforms is imminent. However, because the reforms are still outstanding, the Council assesses that Victoria has not 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*, Victoria adopted a suite of competition reforms by introducing the Legal Practice Act. The state introduced reforms to improve the regulation of the legal profession and implement national model law provisions with the passing of the *Legal Profession Act 2004*, which replaces the 1996 Act.

The Legal Profession Act does not contain significant reforms to professional indemnity insurance because this matter is yet to be resolved at the national level (see chapter 19). It does, however, extend professional indemnity insurance provisions to cover multidisciplinary partnerships and incorporated legal practices. Section 3.5.2(5) of Act also permitted barristers to apply for insurance with the Legal Practitioners' Liability Committee and gave the committee the power to refuse to provide that insurance. It is now superseded by s3.5.2(7), under which the Victorian Bar Council has resolved that all barristers must insure with the committee. This outcome is in line with the PricewaterhouseCoopers NCP review recommendation that Victoria should retain the existing compulsory professional indemnity insurance arrangements, but extend the availability of coverage to barristers. PricewaterhouseCoopers found that this approach has practical benefits: it provides for high quality comprehensive cover with ongoing and universal run-off and dishonesty cover, which can be achieved with lower and more stable premiums and stronger incentives (than under a competitive insurance model) to invest in risk-management programs (PWC 2004).

Victoria has 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.

Part 7.1 of the Legal Profession Act covers conveyancing businesses. The provisions in the Act are unchanged from the Legal Practice Act. In the 1999 NCP assessment, the Council considered that Victoria had complied with its CPA commitments in relation to the conveyancing profession (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, representations from Victorian conveyancers made the Council aware that Victoria's legal profession legislation allows conveyancers to compete only in the nonlegal aspects of conveyancing. Subsequently, on 29 September 2003, the Council sought clarification from Victoria on whether it had acted on the recommendation of the 1995 report of the Attorney-General's Working Party—specifically, the recommendation that the government require the Legal Ombudsman to report on whether nonlegally 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 advised that the Victorian Government had not accepted the recommendation of the Attorney-General's Working Party. The department also 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 government outlining its position on conveyancing restrictions. It noted that the Council's finding of compliance, based on a misperception in the context of the 1999 NCP assessment could no longer stand because:

- the continuation of conveyancing restrictions reduces the potential benefits to consumers
- the restrictions are not consistent with practices in most other jurisdictions.

The secretariat advised Victoria that it needed to remove the conveyancing restrictions or provide an independent and robust public interest case for the net community benefit from retaining the restrictions. The Department of Treasury and Finance response of 6 May 2004 confirmed that conveyancing practice restrictions were being considered as part of the review of the Legal Practice Act but the review did not specifically address the Council's concerns. The review, completed by PricewaterhouseCoopers in May 2004, noted that the regulation of conveyancing would involve complex, interrelated matters and that a full assessment of the benefits and costs of reserving legal work associated with conveyancing services to legal practitioners would require a comprehensive review of the regulation of conveyancing services, including the legal work associated with conveyancing transactions. PricewaterhouseCoopers recommended that the current regulatory approach be retained until a new regulatory scheme, if any, was developed for conveyancers.

On 10 November 2004, the Attorney-General and the Minister for Consumer Affairs jointly announced a review of the regulation of Victoria's conveyancing industry. (This announcement followed the closure of Grove Conveyancing for suspected fraudulent activity resulting in estimated client losses of up to $9 million.) One purpose of the review, conducted by The Allen Consulting Group was to assess the efficiency and effectiveness of the current regulatory regime for conveyancers and consider options for reform. The consultants released a discussion paper in March 2005, which sought comments on the extent of work that conveyancers should be able to perform in relation to land transactions. They presented a final report (not yet public) to the Department of Justice in July 2005.

The Council notes, however, that other jurisdictions have not found compelling evidence to support conveyancing practice reservations. The NCP review of legal practice legislation in Queensland, for example, found that a full law degree is not necessary for achieving the objectives of the legal practice legislation with respect to conveyancing. It considered that people

who have the knowledge and practical training to competently perform conveyancing services should be permitted to compete in the market for conveyancing work subject to having adequate professional indemnity and fidelity insurance (Department of Justice 2003). Moreover, a New South Wales study found that conveyancing fees 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 (Baker 1996).

Victoria is potentially forgoing significant benefits from reform by failing to expedite its review and reform of conveyancing practice restrictions. The Council notes, however, that Victoria has made significant reforms in other areas of legal profession regulation and has continued to progress matters in the area of professional indemnity insurance, which are subject to national processes.

In light of Victoria's progress in addressing conveyancing practice restrictions coupled with ongoing national processes for professional indemnity insurance, the Council assesses that Victoria has failed to achieve compliance with CPA obligations in relation to the legal profession.

E Other professions

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.

The current status of Victoria's response to each recommendation is as follows:

- *Recommendations to remove entry qualifications for travel agents.* Victoria reported in 2004 that it did not support the removal of qualification requirements, but that specific requirements would be reviewed. The state's 2004 NCP annual report presented arguments for retaining entry qualifications for work relating to fares and ticketing for overseas travel. New reduced qualification requirements were introduced by the Travel Agents (Amendment) Regulations 2004, which took effect from 1 January 2005.

- *Recommendation to introduce a competitive insurance system*. In its 2004 report to the Council, Victoria presented its arguments in favour of retaining compulsory Travel Compensation Fund membership. It proposed to retain the mandatory compensation scheme and undertake a review with a view to establishing a risk based premium structure. The Travel

Compensation Fund conducted this review in 2004, finding that risk based weighting of premiums would not be feasible because historical claims data do not disclose any clear predictors of risk.

- *Recommendation to change the current licence exemption threshold.* A variation to the existing Order-in-Council to effect an increase in the turnover threshold for licence exemption to $50 000 will be completed by the end of September.

- *Recommendation to extend the operation of the Act to the Crown.* This was implemented in May 2004 by the *Estate Agents and Travel Agents (Amendment) Act 2004.*

The Council accepts Victoria's position on qualification requirements and the retention of compulsory Travel Compensation Fund membership and looks to Victoria to complete its reforms by the foreshadowed change to the licence exemption threshold. Because this reform is yet to be implemented, the Council assesses that Victoria has not met its CPA obligations in relation to travel agents legislation.

F1 Compulsory third party motor vehicle insurance and workers compensation insurance

Transport Accident 1986
Accident Compensation Act 1985
Accident Compensation (Workcover Insurance) Act 1993

Not assessed (see chapter 9).

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 have 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 trade measurement legislation because it did not complete 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 has expressed concern 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.

The Government conducted a review of the options for the post-2007 lottery industry arrangements and announced the future licensing arrangements in March 2005. The public lotteries licence or licences that will operate after 30 June 2007 will be awarded through a competitive process that will result in the Government granting either an exclusive lotteries licence or up to three non-exclusive licences. The licence or licences issued will be structured to provide flexibility for a national lottery market. These reforms were contained in the Gambling Regulation (Public Lotteries Licensing) Bill 2005, which Parliament passed on 26 May 2005.

In the 2004 NCP assessment, the Council considered that Victoria had not provided a sufficient public benefit argument for extending exclusivity, so 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 lottery services and contributed to the prospect of a national market after 2007.

Non-priority legislation

Table 12.1 provides details on non-priority legislation for which the Council considers that Victoria's review and reform activity does not comply with CPA clause 5 obligations.

Table 12.1: Noncomplying review and reform of Victoria's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (Victoria) Act 1995	Regulation of the provision of consumer credit	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Standing Committee of Officials of Consumer Affairs is considering a Consultation Draft Bill prepared in order to implement one of the two recommendations for legislative change in the NCP review. Stakeholder feedback will be obtained before the Bill is finalised and put to the Ministerial Council on Consumer Affairs for sign-off and introduction into the Queensland Parliament, the template State for the Code. The other NCP review recommendation, addressing pre-contractual disclosure of key financial information, has also been progressed to consultation draft status. As at September 2005, the Uniform Consumer Credit Code Management Committee is waiting for the New South Wales Chief Parliamentary Counsel, on behalf of the Parliamentary Counsels Committee, to supply the finalised draft of the proposed amending regulations. This draft will be put to stakeholders for feedback on the method of implementation revealed by the detail in the draft.
Crown Lands (Reserves) Act 1978 and related Acts	Leases and licensing that may result in anticompetitive practices	Major public review by external consultants completed. The government conducted another review in 2004 to update the Act and to remove redundant and outdated provisions.	Legislative amendments are expected in 2005-06.
Land Act 1958	Leases and licensing	The government conducted a further review in 2004 to update the Act and to remove redundant and outdated provisions.	Legislative amendments are expected in 2005-06.

(continued)

Table 12.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Therapeutic Goods (Victoria) Act 1994	Licensing, scheduling and labelling of goods	Review completed in June 1999.	Any amendments will be incorporated into possible amendments to the *Drugs Poisons and Controlled Substances Act 1984* to give effect to the outcomes of the national review of that Act. The Trans-Tasman Therapeutic Goods Agency will now start on 1 July 2006. Outstanding reforms await legislative action by the Australian Government.
Trustee Companies Act 1984	Regulation of trustee companies	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

13 Queensland

A3 Fisheries[1]

Fisheries Act 1994

The Fisheries Act regulates fishing in Queensland waters via controls on access to fisheries, controls on inputs and, in some cases, controls on output. The major commercial marine species fished in the state are species of crabs, prawns, mullet, mackerel and reef fish. The National Competition Council's 2004 National Competition Policy (NCP) assessment concluded that the Queensland Government had not completed its Competition Principles Agreement (CPA) clause 5 obligations arising from the Fisheries Act. The outstanding matters were:

- fishery licensing—the 2001 NCP review recommended simplifying the variety of vessel and occupational licences
- fishery management costs—the review recommended increasing the recovery of fishery management costs from fishers and reducing cross-subsidies between fishers.

Since the 2004 NCP assessment, the government has released proposals to fulfil these recommendations and, via a regulatory impact statement and draft public benefit test, has invited comment from the public and interested parties. In particular, it proposes to:

- remove licensing for assistant fishers, fishing crew, commercial tender fishing boats and some inshore charter boats
- simplify buyer licences
- issue remaining licences (such as commercial fisher, commercial fishing boat and commercial harvest fishing) for an indefinite period, subject to annual registration fees
- replace a range of ad hoc fees with a single access fee for each fishery, set with reference to factors such as the value of the fishery, the number of participants and environmental impacts.

---

1 The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

The government will consider final reform proposals, including the phasing of their implementation, following completion of this consultation process in late 2005.

The Council assesses that Queensland is yet to complete its CPA clause 5 obligations arising from the Fisheries Act. The state will have met these obligations when it has:

- simplified its various vessel and occupational licences
- begun to phase in increases in fishery licensing fees.

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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council thus assesses that Queensland has not yet met its CPA obligations in relation to this legislation.

B1 Taxis and hire cars

Transport Operations (Passenger Transport) Act 1994

Queensland's Transport Operations (Passenger Transport) Act limits the number of taxis. Queensland Transport determines the number that it considers is 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. The number of licences for hire cars is not restricted by regulation.

Queensland's NCP review of the Act, released in September 2000, recommended that the government retain the existing arrangements for issuing taxi licences but with modifications to improve services. The Council found in its 2002 NCP assessment that the review report did not provide a strong public benefit case for its recommendation to continue the restrictions on taxi numbers. The review demonstrated the substantial costs of quantity restrictions but was equivocal on the costs and benefits of de-restriction strategies, given experiences overseas. The review essentially reversed the onus of proof in CPA clause 5(1) by arguing that the status quo should prevail because a net benefit from de-restriction was difficult to demonstrate.

In its 2004 NCP 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 (including 100 wheelchair accessible taxi licences in Brisbane) for the 27-month period from August 2003—equivalent to a 4.5 per cent increase in taxi numbers over this period. 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.

In its 2005 NCP annual report, the government confirmed plans to introduce a formulaic approach to reviewing and potentially increasing taxi numbers by the end of 2005. The approach will account for data on population, ageing, waiting times, average number of jobs per taxi, seasonal peaks and the availability of other public transport. The government considers that the model will enable licence releases to be planned, within areas, for up to five years in advance and will facilitate a progressive program of licence releases. Implementation of the new program is expected to occur by the end of 2005.

The Council concludes that Queensland has not met its CPA clause 5 obligations in this area.

C1 Health professions

Nursing Act 1992

The Queensland review of the Nursing Act recommended 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. The *Health Legislation Amendment Act 2005* implements the outcomes of the review of the Nursing Act. The amendments:

- 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 amendments are consistent with the state's NCP obligations. The reforms commenced on 29 April 2005. Consequently, Queensland has met its CPA obligations in this area.

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) recommendations for national pharmacy regulation reform (see chapter 19). If passed, they would have complied with desired COAG outcomes in that they would have removed:

- restrictions on the number of pharmacy businesses that a pharmacist may own

- 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 that advised that Queensland would not attract competition payment penalties if as a minimum, it relaxed ownership restrictions to allow pharmacists to own up to five pharmacies each and permitted friendly societies to own up to six pharmacies each.

These reforms fall short of those required by COAG national review processes. While the number of pharmacies that a pharmacist could own under the Act would increase from four to five, COAG outcomes require that such restrictions be removed. Moreover, the reforms would restrict friendly societies to owning six pharmacies. Previously, friendly societies could apply to the minister for permission to establish a new friendly society pharmacy.

Nonetheless, Queensland implemented these amendments on 29 April 2005, in conjunction with other pharmacy reforms in the Health Legislation Amendment Act.

The reforms fall short of reforms recommended by COAG national processes, so Queensland has failed to meet its review and reform obligations in relation to pharmacy.

Occupational Therapists Act 1979
Occupational Therapists Registration Act 2001

The key restriction on occupational therapists in the Occupational Therapists Registration Act 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 weaken 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' 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, thus 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, which assess staff competency. 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' Advisory Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of CoAG's endorsement.

Queensland advised that it has amended its legislation as far as possible to implement the Galbally reforms. It noted that additional legislative amendments to implement reforms depend on action taken by other parties under national processes (for example, the 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 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 recommendations 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 model laws (see chapter 19). It has also advised that it will consider reforms to professional indemnity in the context of national processes. Thus, while the state has made significant progress in these areas, the Council assesses that Queensland has not met its CPA obligations because the reform process is 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 that:

> … *[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 found no evidence to indicate that fees would not be lower. The onus of proof in CPA clause 5 is that, unless competition restrictions are demonstrated to be in the public interest they should be removed.

In correspondence to the Council on 23 August 2004, the Queensland Government reported its intention to retain the competition restriction. It provided the following reasons for not adopting 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 with Queensland's competitive fees.

- The costs of establishing a licensing scheme for such a small occupational group, such as conveyancers, are not justified by only the possibility of some 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 because 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 able to offer only more limited services or not being legislatively recognised, as in Victoria.

In its 2004 NCP assessment, the Council accepted that the Queensland conveyancing market is relatively competitive. It noted, however, that 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, which cannot be validly compared with actual conveyancing fees charged in Queensland.

Regarding licensing scheme costs, the Council accepts there may be some costs in establishing such arrangements. However, the government has not 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

reassessed its insurance concerns in light of the recent stabilisation of the insurance market.

Further, the Council does not concur that the adoption of fidelity insurance trust fund arrangements would necessarily lead to an adverse budget impact, because contributions from conveyancers could be adjusted to cover for expected risks relating to payouts. In response to this the Queensland Government noted that the government could be exposed to significant losses should a large or multiple instances of fraud eventuate. In its 2005 NCP annual report, the government pointed to the failure of a Victorian unlicensed conveyancer, which closed owing a reported $6–9 million as a means to illustrate the extent of the potential risk (Government of Queensland 2005). The government considers that a licensing system would not overcome this risk.

The Council accepts that the government could incur losses if defaults by conveyancers were paid from public monies and the state could not recoup the funds through higher future contributions. It also accepts that the required contribution from conveyancers may have to be set very high should a significant fraud occur and this may have implications for the viability of the profession. However, the state has not demonstrated that it is not possible to minimise such risks, say, by imposing a bond on licenced conveyancers to provide some protection against high cost events. Nor did it explain how Queensland differs from other states, such as New South Wales or Tasmania (which has only recently reformed conveyancing restrictions), where this issue has not emerged as a reason to justify retaining or imposing competition restrictions.

Finally, the Council disagrees with Queensland's assertion that it is being singled out. While different regulatory arrangements exist 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 they do 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

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 buyer 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. Queensland conducted a further review of commissions in 2003, from which some steps were taken to deregulate commissions and buyer premium fees, other than commissions for real estate transactions. The Queensland Government determined that a further review of real estate commissions should be undertaken in late 2004. The review has commenced, but has been unable to identify data which adequately resolves the issue for or against deregulation in the Queensland context, particularly in the sales of residential property. The Queensland Government is still considering its policy position in this matter.

The Council assesses Queensland as not having met its CPA obligations in this area, because the state did not finalise its review and reform 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 progressing implementation of the review recommendations and made amendments to the Travel Agents Regulation 1998 which came into force on 1 April 2005. The amendments lift the licence exemption threshold to $50 000, introduce revised qualification requirements for licensed travel agents and exempt travel agents from multiple jurisdiction licensing when they advertise across borders but do not have offices in those other jurisdictions. Queensland anticipates introducing a Bill to remove the licensing exemption for Crown owned business entities before the end of 2005.

Queensland advised the Council that there is no longer any Crown owned travel business to which the exemption applies. The government recently licensed its travel businesses, Sunlover and the Queensland Travel Centres, to a private sector operator that does not have access to the exemption.

Queensland has implemented all but one of the recommended reforms and is committed to implementing the remaining reforms. In the interim, the absence of an exemption for Crown owned travel businesses will have no effect on the market. The Council assesses, therefore, that Queensland has met its CPA obligations in relation to travel agents legislation.

F1 Workers compensation insurance

Workcover Queensland Act 1996

Not assessed (refer chapter 9).

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 (which entitles the licence holder to 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.

The Council's 2003 and 2004 NCP assessments further considered Queensland's restrictions on packaged liquor sales. Whereas Queensland contended that it had completed its review and reform activity, the Council considered that Queensland had not established a public interest case for its restrictions. The Council noted the absence of similar provisions in other jurisdictions, and the lack of evidence that Queensland's restrictions contribute to harm minimisation. In its previous NCP assessments, the Council recognised that the Queensland Government views rural hotels as important to the social fabric in their local areas and may wish, as a policy objective, to support these hotels. The Council suggested that restricting packaged liquor sales to hotels in rural areas and removing the restriction in urban areas would be a way of pursuing this objective while enabling urban areas to benefit from greater competition.

Because there has been no change during the past year, the Council confirms its 2004 assessment that Queensland has not complied with its CPA obligations in relation to liquor licensing.

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 have not been completed (see chapter 19), Queensland has yet to meet its CPA obligations in relation to trade measurement legislation.

I3 Gambling

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), and concluded that applying the same cap to hotels as to clubs would lead to 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.

Although the Council did not accept that promoting the club industry via differential caps is the only way in which to provide community facilities, it recognised that increasing the hotel and statewide caps would add considerably to the number of machines in operation, with potential for increased harm.

A further issue was the 40 per cent cap on each licensed monitoring operator's share of the gaming machine market. (Each club and hotel holding a gaming machine licence 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.) At the time of the review, each of the four licensed monitoring operators was 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, on balance, that it would not be in the public interest to remove the restriction. The Council considered that the review's finding appeared to reverse the onus of proof in the CPA obligations, particularly given that the review also noted that the restriction may not be necessary because this is a market in which experienced operators use well tested systems.

In October 2004, the Queensland Gaming Commission considered submissions from two licensed monitoring operators requesting that the cap on market share be lifted. It approved the request and removed the schedule attached to licensed monitoring operators licences, which imposed the 40 per cent maximum.

The Council assesses Queensland as having met its CPA obligations in relation to gaming machines.

Non-priority legislation

Table 13.1 provides details on non-priority legislation for which the Council considers that Queensland's review and reform activity does not comply with its CPA clause 5 obligations.

Table 13.1: Noncomplying review and reform of Queensland's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (Qld) Act 1994, Consumer Credit Regulation 1995, Consumer Credit Code	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation which will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.
Financial Intermediaries Act 1996	Establishes prudentially based supervisory system with respect to cooperative housing societies, terminating building societies and other similar entities.	The legislation was not subjected to detailed scrutiny for restrictions because it had been expected that the supervision of all such institutions would be transferred to the Australian Prudential Regulation Authority. However, some of the societies do not meet the requirements for transfer. A closer examination of the legislation indicates it comprises normal prudential supervision arrangements. Any restrictions on competition that may exist are small and decreasing.	The Act is likely to be repealed but is being retained pending a long term policy solution for the administration of co-operative housing societies.

(continued)

Table 13.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Land Act 1994	Provides for the administration and management of non-freehold lands and the legal creation of freehold land.	Targeted public review completed in May 1999. Review examined two restrictions: prohibiting corporations from holding perpetual leases for grazing or agricultural purposes; and limiting the number of living units that non-freehold land owners may aggregate. The government directed further consultation with targeted groups in 2001 but is yet to formally consider the options.	The government is considering the review recommendations.
Trustee Companies Act 1968	Restricts the provision of certain services in relation to deceased estates and the maintenance of minors and other legally incapable persons, to certain statutory trustee companies (i.e. those cited in a schedule to the Act) and also prescribes a maximum commission chargeable against the estate.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

14 Western Australia

A1 Agricultural commodities[1]

Grain Marketing Act 1975

Western Australia's *Grain Marketing Act 1975* prohibited the exporting of barley, canola and lupins other than by the Grain Pool of Western Australia. A National Competition Policy (NCP) review of the Act by the Department of Agriculture in 2000 recommended that the Western Australian Government retain the export monopoly until the Australian Government removed its bulk wheat export monopoly. Following strong criticism of this review report, in April 2002 the department proposed that the government allow other parties to export grain in bulk where not in direct competition with the Grain Pool. In August of that year, the Minister for Agriculture and the National Competition Council agreed on legislative reform to sunset the state's grain export restrictions on removal of the Commonwealth's wheat export restrictions and, in the interim, to:

- remove all restrictions on the export of barley, canola and lupins in bags and containers
- prohibit the export of these grains in bulk unless under licence, and grant the Grain Pool the main export licence
- establish an independent authority to license bulk exports by other parties.

The Minister and the Council further agreed that the licensing authority would:

- be predisposed to granting export licences to other parties, provided it is satisfied this would not significantly undermine any price premium that the main licence holder captures through the exercise of market power
- obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power available to the main licence holder.

---

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

Accordingly the government introduced new legislation to Parliament and, the *Grain Marketing Act 2002* was passed in November 2002, repealing and replacing the 1975 Act.

In the 2003 NCP assessment the Council welcomed this legislative change but found that the reforms were incomplete because the regulations and guidelines provided for by the Act were still to be issued. It considered these regulations and guidelines important for maximising confidence among growers, traders and customers in the predictability of the licensing regime by ensuring, as agreed with the minister, that the Grain Licensing Authority (GLA) would be predisposed to granting export licences and would obtain an annual independent assessment of market power related price premiums.

The government released the Regulations and guidelines in September 2003. The Council was satisfied that the guidelines adequately addressed the need for annual independent assessment of market power related price premiums. However, it found considerable uncertainty remained about how the authority would decide:

- which grain export markets returned market power related premiums to Grain Pool PL (GPPL, formerly the Grain Pool) and whether a proposed export would affect any such premiums to a significant extent (refer s31(2) and (3) of the Act)

- whether a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally (refer s31(4) of the Act).

The Council thus responded to the minister that it would also scrutinise the performance of the authority in its first season of operation.

In its 2004 NCP assessment the Council recognised that licences issued by the authority had brought a significant degree of additional competition to the Western Australian grain accumulation market, and that the export licensing arrangements represented an important milestone in the development of Australia's grain industry.

However the Council was also concerned that some licence applications had been delayed or denied where market power-related price premia were not at risk. The GLA had adopted a policy of restricting the volume of grain exports by parties other than GPPL out of a concern that, particularly in years of lower grain production, the state's reputation as a grain exporter and the grain industry generally may suffer if competition left GPPL with insufficient grain to supply its regular customers. While consistency of supply is important to some grain customers the GLA failed to explain why GPPL should not have to compete to obtain sufficient grain for these customers from Western Australian growers or from growers elsewhere via its joint ventures with ABB Grain Ltd and with Elders. The Council was therefore not convinced that ensuring sufficient grain supply for GPPL was a necessary consideration for the GLA.

The Council argued that more competition in the exporting of grain would be of net benefit to the community and an important prerequisite for more competition was to make the licensing process more predictable. The Council advocated the amendment of the ministerial guidelines to set out clear and specific criteria for the GLA 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 sections 31(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 section 31(4)).

In view of these matters, and the minister's commissioning of a review of the Act by accounting and advisory firm RSM Bird Cameron, the Council decided to finalise its assessment in 2005.

The minister released the report of RSM Bird Cameron's review in January 2005 (RSM Bird Cameron 2005). The review concluded that the benefits of the Act and licensing by the GLA exceeded the costs, compared with the pre-reform arrangements. It estimated a net benefit to growers of $3.37 million in the first year of operation of the new arrangements. It noted that growers were becoming better informed about the grain market, that they now had more marketing and financial options, that some growers had increased their returns while some others had suffered decreased returns, and that the reform had drawn more investment into the industry.

The review also noted the Council's call for more clarity in the ministerial guidelines, stating:

> *In our opinion if these matters are appropriately addressed it would result in a far more transparent process and have greater understanding from the industry participants.* (RSM Bird Cameron 2005, para 2.35)

Following the consideration of responses from interested parties to the review report, the minister announced on 30 June 2005 that there would be no changes to the Act or ministerial guidelines.

The minister has not taken the steps towards improving the predictability of the licensing arrangements which the 2004 NCP assessment argued were necessary for compliance with CPA clause 5. Grain exporters and growers nevertheless have more certainty about how the GLA exercises its licensing powers.

Various studies have revealed that GPPL has little ability to drive up grain prices in export markets through restricting supply (see box 14.1). Grain exporters can therefore be confident that, with the possible exception of the Japanese feed barley market, applications for export licences are unlikely to be declined on the grounds that their proposed export poses a significant threat to a market power-related premium captured by GPPL.

Box 14.1: Analysis of market power-related price premiums

In May 2004 the GLA-hired agribusiness analysts Farm Horizons to complete the first independent annual assessment of market power-related price premiums captured by GPPL. Farm Horizons examined 15 markets identified by GPPL as 'core' to its business but found that 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 January 2005 the Minister for Agriculture released for comment RSM Bird Cameron's review of the Grain Marketing Act and the GLA. This review considered various studies commissioned by the GLA to test for evidence of price premiums resulting from the exercise of market power. On this issue the review concluded, 'there are no markets in which the GLA could conclude on the basis of the evidence produced to date that the GPPL has any market power'.

In October 2005 the Minister released the GLA's report for the 2004-05 season including the second independent annual assessment of market power-related price premiums captured by GPPL. Prepared by Storey Marketing this assessment found that overseas buyers do not pay more for Australian grain than grain from other sources, after adjusting for inherent quality or service benefits, except for particular circumstances in Japan. The report concludes that 'the exertion of market power to raise prices in very competitive global grain markets is highly unlikely. The opportunity to "hold the line" on market prices and capture a freight benefit for WA growers through supply control does exist'. While the assessment suggests that the GPPL may be able to utilise its market power to capture premiums that are available due to freight advantages in some markets, the consultant was not provided with sufficient data by the Main Licence Holder to confirm this.

In relation to the other key licensing consideration—the impact of proposed grain exports on the state's reputation as a grain exporter and on the grain industry generally—the GLA clearly recognises the benefits that competition has brought. Its latest report to the minister welcomed the findings of the RSM Bird Cameron review and presented further evidence that competition in the export cash grain market has lifted cash prices and indicator pool prices for feed barley and canola, better reflecting the shipping cost advantages enjoyed by Western Australia in exporting grain to Asian and Middle East markets.

The GLA's report also indicates that for the most important prescribed grain, feed barley, it is now not overly concerned that GPPL's ability to supply 'core' markets could be threatened by licences awarded to other exporters. The report presents statistical analysis showing that in 9 years out of 10 barley production is expected to significantly exceed the level which the GLA considers necessary for GPPL to meet demand from its 'core' markets.

The GLA's recent licensing decisions seem to confirm that, with more experience and analysis under its belt, it is taking a somewhat more liberal approach. So far in the 2005-06 season it has accepted export licence applications for a total volume of 783 000 tonnes, compared with 572 000 tonnes licenced for the whole of the 2004-05 season, and declined two

applications[2] totalling 98 000 tonnes, compared with 475 000 tonnes declined for 2004-05.

In the interests of certainty for exporters and growers the Council would prefer that the GLA expressly renounce any concern for protecting the availability of grain volume to GPPL. GPPL remains the dominant exporter of prescribed grains in Western Australia, accounting for around 90 per cent of grain exports in the last two seasons, and has recently announced a move to acquire grain on its own account in South Australia and Victoria. However the Council is satisfied that, in the absence of more specific ministerial guidelines, the GLA is moving steadily, albeit cautiously, in the right direction.

The Council also considers Western Australia's export licensing arrangements represent the most important reform of an export-oriented grain single desk under NCP[3]. This liberalisation substantially exceeds that achieved so far by the Australian Government in the export wheat market or the South Australian Government in the export barley market, notwithstanding the lack of evidence that either single desk is in the public interest. Western Australia's reforms are clearly benefiting growers and others in that state and are thereby demonstrating to other jurisdictions the value of bringing competition and choice all the way from overseas markets to the farm gate.

The Council has therefore decided that Western Australia has satisfactorily met its CPA clause 5 obligations in relation to the Grain Marketing Act.

Marketing of Potatoes Act 1946

The growing and marketing of potatoes in Western Australia are controlled under the *Marketing of Potatoes Act 1946*. The Act prohibits the production of potatoes in Western Australia for fresh domestic sale unless licensed by the Potato Marketing Corporation. These licences restrict land available for growing potatoes for fresh consumption but not for processing or export. The Potato Marketing Corporation sets wholesale prices and pools sale proceeds, paying growers an average return after deducting its own costs. Grower payments reflect grading and volume but not variety.

The Department of Agriculture completed a review of the legislation in December 2002. The review recommended that the government maintain the current regulated supply system, given the lack of evidence that any major changes would result in improvement in the public interest. It also recommended that the government investigate ways to improve the operation of the Act.

---

2 Not including one application for an extension of a licence from the 2004-05 season.

3 Victoria, Queensland and, in 2005, New South Wales have all fully deregulated their former grain export single desks. However in these states exports are relatively less important.

The government confirmed in 2003 that it would retain the regulation of supply management and price fixing. In July 2004, following advice from an advisory group, the Minister for Agriculture announced that the government would bring to Parliament amendments 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 Potato Marketing 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).

The government is yet to bring forwards these legislative amendments. Nevertheless it has already made some changes. The Potato Producers' Committee has taken over by he marketing promotion functions under the *Agricultural Produce Commission Act 1988*, and the Potato Marketing Corporation no longer competes in the export market. The Council agrees that the changes 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.

The Council has not been convinced, however, that restricting the supply and pricing of table potatoes brings benefits to the community that outweigh the costs, or that the objectives of the legislation can be achieved only by restricting competition. The 2002 NCP review of the Act, in finding that evidence for a net public benefit from deregulation was inconclusive, reversed the presumption required by the CPA clause 5 (that is, the presumption that legislation should not restrict competition unless in the public interest).

Subsequently, the government argued that a retail price survey commissioned by the Potato Marketing Corporation shows that Western Australian consumers enjoy cheaper potatoes than do 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., The retail price survey reveals nothing about, for example, whether, Perth prices for most desired table potato varieties, without the restrictions, 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* [Potato Marketing Corporation] *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 down wholesale and retail prices, and displacing potatoes from South Australia and, to some extent perhaps, substitute foods.

The Council thus continues to find 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 its potato supply and marketing controls. Such reform could include a phased transition to help reduce the adjustment costs that existing growers might face.

A3 Fisheries

Fish Resources Management Act 1994

Western Australia's Fish Resources Management Act provides a framework for the management of the state's wild fisheries and aquaculture. Most of the specific restrictions are imposed by subsidiary instruments such as Regulations, management plans, notices and licences.

The legislation has been subject to several NCP reviews. A review of the provisions regulating the rock lobster processing industry, completed by ACIL Consulting (now ACIL Tasman) in December 1998, recommended that the government:

- remove limits on the number of processing licences and convert existing 'restricted' processing licences (for processing for domestic market consumption only) to 'unrestricted' licences
- allow licence holders to establish facilities at multiple locations.

The government announced in 2002 that it accepted these recommendations in part. Since 1 July 2003, there has been no limit on the number of licences

for processing rock lobster for domestic market consumption, and holders of 'unrestricted' processing licences may operate multiple receival facilities. The processing of rock lobster for export remains restricted.

The review of the fishery related provisions was completed by the Department of Fisheries in 1999. It recommended in relation to the rock lobster fishery that the government:

- commission an independent update of earlier work on the net benefits of moving to an output based management regime

- in the interim, remove the minimum and maximum limits on pot holdings, and separate pot licences from boat licences.

The government responded to these recommendations in 2002 by announcing that the existing management arrangements, other than the 150 pot maximum holding, would remain until December 2006 pending a review of the benefits and costs of moving to output based management. Also, the maximum pot holding limit was removed from July 2003. The management review is progressing, with economic modelling completed in August 2005, and consultation with the industry scheduled to begin in October 2005.

In relation to other fisheries, the second review recommended retaining the existing restrictions on competition, but integrating NCP principles into the ongoing fisheries management review cycle. Since the review, the department has implemented a Competition Policy Assessment and Compliance Report system to ensure all new or amending legislation, Regulations and Ordinances are assessed within the NCP framework. The system involves operational and policy staff at the early stages of regulatory development. The department is also working towards all fishery licences and related entitlements being transferable by December 2005.

The department reviewed the licensing of aquatic tour operators in 2003. Following this review, the government removed the requirement that applicants for new licences have a prior history and commitment to the industry. Instead, applicants for new licences need only 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 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 noted that

the fishery is spread over a 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 Council therefore welcomes recent advice that the Department of Fisheries has started a new review as to whether the limit on rock lobster export processing licences is in the public interest. This review will include opportunities for input from the industry and the general public and is expected to be concluded in early 2006.

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

The Pearling Act regulates the supply of cultured pearls from Western Australia. Most pearls are exported. The industry consists of three main sectors: the wildstock harvesting sector, the hatchery sector and the farming sector. The Act's restrictions on competition are many and often complex, but the key restrictions are that:

- the volume of wildstock harvested is limited by a total allowable catch and associated individual transferable quota
- access to pearl oyster wildstock and cultivation is restricted to holders of pearling licences with at least 15 quota units
- the volume of hatchery produced oysters is limited by individual transferable quota (known as hatchery quota/options)
- entry to the hatchery sector is restricted to holders of hatchery licences with a pearling licence or a commercial relationship with a pearling licence holder
- export sales of hatchery spat and oysters are prohibited
- hatchery produced oysters must be no greater than 40 millimetres when sold to pearl farms; otherwise, they are deemed to be wildstock and subject to wildstock quota
- entry to the farming sector is restricted to holders of pearl farming leases also holding either a pearling or hatchery licence
- oysters transferred to a pearl farm become the property of the farm lease holder
- foreign ownership of licence/lease holders is prohibited.

In addition, the executive director of the Department of Fisheries has considerable discretion in exercising responsibilities such as approving entitlement transfers. There is no administrative tribunal to review decisions of the executive director.

A review of the Act, completed by the Centre for International Economics in 1999, advocated substantial regulatory change. Specifically, it recommended:

- removing the minimum limit on holdings of pearling quota
- decoupling pearl farming licences from pearl fishing licences
- auctioning temporary increases in wildstock quotas
- removing hatchery quotas without delay
- codifying in Regulation the criteria for fishery management decisions
- establishing an independent review tribunal.

On 25 March 2002, the Minister for Agriculture, Forestry and Fisheries announced that the government had accepted most of the recommendations, but not those to remove limits on hatchery quotas and to auction temporary increases in wildstock quotas.

Implementation of these recommendations continues to await new legislation, to be known as the Pearling Management Bill. Drafting instructions and an NCP 'gatekeeping' review have been prepared and Cabinet approval for drafting the new bill will shortly be sought, but the timing of introduction to Parliament is as yet unknown.

In the meantime, the government, via the Pearling Industry Advisory Committee (PIAC), has reviewed its policy of limiting the volume of hatchery produced oysters. This review compares the benefits and costs of deregulation against a controlled growth option, which could involve retaining hatchery limits but also provide scope for additional allocations of hatchery quota. A draft Hatchery Policy Statement will be made available for public comment before the committee considers it in October and advises the Minister. A decision is scheduled to occur before the current arrangements expire on 31 December 2005.

The Council assesses that Western Australia has not met its CPA clause 5 obligations arising from the Pearling Act, because the legislation continues to impose competitive restrictions that have not been shown to be in the public interest. The government will have met its obligations, most importantly, when it has removed:

- 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)

or produced new evidence to show these restrictions are in the public interest.

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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

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 Preparations 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 new legislation, the Biosecurity and Agricultural Management Bill (formerly the Agriculture Management Bill), which is being drafted for introduction to Parliament before the end of 2005. The Bill will repeal the Aerial Spraying Control Act and the Agricultural Produce (Chemical Residues) Act and include all control of use provisions under the one Act (other than the commercial operators licensing provisions under the Health Act). The Veterinary Preparations and the Animal Feeding Stuffs Act was amended in 2004 to allow regulations to be made for the control of use of veterinary chemicals. That Act is now the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976* and it will also be superseded by the proposed Biosecurity and Agriculture Management Bill and regulations.

Because Western Australia has not implemented 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. Western Australia intends to 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 the outcome of 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.

Cabinet approval for drafting amendments is expected shortly and, subject to this, an amendment bill may be passed in the autumn 2006 session of Parliament.

The Council assesses that Western Australia is yet to meet its CPA clause 5 obligations arising from the Veterinary Surgeons Act as restrictions on competition remain which have not been shown to be in the public interest.

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 and Regulations

The Western Australian Government initially advised the Council that, rather than review these five Acts and 20 Regulations, it would replace them with new consolidated maritime legislation. And, in 1999 the government introduced a Maritime Bill and a Maritime and Transport Legislation Amendment Bill to the Parliament. The legislation was not passed before the 2001 state election where a change of government ensued and the bills subsequently lapsed. The Council has continued to assess that the state has not met its CPA obligations in relation to this legislation.

In 2004, the Council advised that, notwithstanding the government's stated intention to introduce new maritime legislation, the original Acts had not been reviewed. The Council considered it likely that not all of the Acts would contain significant competition restrictions and therefore advised Western Australia that it would be in the state's interests to conduct a legislation review, particularly in light of the protracted timeline for completing a separate review to develop new overarching maritime legislation.

In September 2005, the government informed the Council that an independent NCP review of the legislation had been completed by the Allen Consulting Group. The government indicated that it did not intend for the NCP review to lead to amendments to the five Acts but, rather, to inform the separate review of the Maritime Bill. The Council is satisfied that this approach minimises the scope for 'double adjustment' of legislation.

The Allen Consulting Group review identified that the Acts contain several notionally restrictive provisions. It did not consider these to be competition restrictions per se because they are, for example, technical in nature and underpinned by international and industry-wide codes and standards (such as the National Standard for Commercial Vessels) or had met NCP principles in other fora, such as the regulation impact assessment process of the National Marine Safety Committee.

However, the review identified some other, potentially more significant types of competition restrictions. It noted:

- instances of occupational regulation which it assessed provide a net public safety benefit. It recommended that the restrictions be retained but consideration be given to increasing their clarity.

- instances of licensing of products and services, but assessed that they provide a net public benefit by protecting human life and facilitating

management of marine resources. It recommended that licensing be retained, but consideration be given to adopting competitive methods for allocating licences.

- a provision in the Marine Harbours Act that provides tax and land acquisition advantages to government businesses. It found the provisions to be anti-competitive and recommended their removal.

- instances of operational regulation of products and services, but determined that they provide a net public benefit in protecting property and/or that they comply with national codes for marine safety.

On balance, with the exception of the provisions that breach competitive neutrality principles, the review assessed that the restrictions are in the public interest, being focussed principally on ensuring safety and efficiency in marine activities. It also assessed that the restrictions meet the objectives at reasonable cost and that alternative approaches are limited.

The review did not, however, give unqualified support for the Acts. It observed that the government, in developing new replacement legislation, should undertake some administrative housekeeping to improve the efficiency of some measures. For example, it considered that:

- some minor provisions that extend beyond safety and the efficient operation of the maritime industry should be removed

- the approvals process for occupational licensing needs to be fully transparent and based on quality-related criteria

- the scope for issuing licenses for scarce resources on a competitive basis should be explored

- the legislation should be performance based rather than prescriptive.

The Council agrees with the review's suggestions and urges the government to take these into account when developing its new maritime legislation. In relation to the five Acts, the Council concurs that the Marine and Harbours Act contains competition restrictions that are not in the public interest, whereas the other four Acts and associated Regulations contain restrictions that are either trivial or have been assessed as being in the public interest.

As noted, the government does not intend to amend directly the current Acts. The purpose of the NCP review was to inform the broader development of the government's overarching maritime legislation and to identify the nature and extent of competition restrictions in the current legislation. On that basis, the Council is satisfied that the Western Australian Government has met its CPA clause 5 obligations in relation to the Lights (Navigation Protection) Act, the Shipping and Pilotage Act, the Western Australian Marine Act and the Jetties Act because these Acts have been found to have minor competition restrictions that are in the public interest.

In relation to the Marine and Harbours Act, the Council assesses that Western Australia has not met its CPA clause 5 obligations. It will do so when the Act is repealed, provided that the provisions that breach competitive neutrality are not imported into the new maritime legislation.

B7 Air transport

Transport Co-ordination Act 1966

The Transport Coordination Act provides for the licensing and regulation of aircraft used for commercial purposes. The 1999 review recommended that this provision be circumscribed so licences are required only where there is a public benefit. The government endorsed this recommendation and intended to repeal the relevant 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, however, led the government to again review its intrastate aviation policy and to confer Skywest with a monopoly licence for the provision of aviation services on 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 subsequently extended Skywest's licence, subject to a review being completed by May 2004.

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 route clusters, with the successful tenderers providing the new services from December 2005. The 2004 NCP assessment found that Western Australia had not met its CPA obligations because reform of intrastate aviation was still in progress.

In March 2005, the Department for Planning and Infrastructure wrote to the Council describing the features of its proposed tender arrangements:

- The government would call for tenders to provide aviation services for the coastal and northern goldfields clusters (or networks), with a proportion of the profitable Perth–Geraldton route assigned to the two networks, to facilitate cross-subsidisation of the marginal or loss-making routes in each cluster.

- If one airline was ranked first for both networks, that applicant would be given a first option to choose the network it wished to operate, and the remaining network would be offered to the second ranked applicant. The government believed two operators would ensure continuity of aviation services in the event of one airline going out of business.

The Council expressed its concern that the proposed arrangements would involve non-transparent cross-subsidies. In its November 2000 communiqué, COAG agreed that community service obligation payments or subsidies should be transparent, appropriately costed and directly funded by governments. While seeking to maintain appropriate air services for regional communities is consistent with Western Australia's NCP obligations, doing so by engineering cross-subsidisation from Geraldton passengers was not consistent with openness and transparency.[4]

However, when Western Australia advised the Council of its intention in late March 2005, the government was already well advanced in planning the network tenders. The Council was conscious that adverse implications might have arisen for industry certainty and investment if Western Australia were to make substantial late changes to the tender arrangements. Accordingly, it met with the Department for Planning and Infrastructure on 30 March 2005, and agreed that an adverse competition payment recommendation would be unlikely to arise from the government's intention to tender the networks in the proposed configurations, provided that the government:

- formally announced, at or before the time the tenders were let, that it would conduct an independent NCP review before the completion of the five-year tender period (say, after three years)

- either concurrently (or as part of a two-stage process leading into that NCP review) conduct a robust analysis of the comparative costs and benefits of cross-subsidies under network tender arrangements versus direct budget funded subsidies targeted to only the marginal aviation routes.

In its 2005 NCP annual report, the government advised that new competitively tendered regional aviation services are due to be operational on 1 January 2006. Subsequent discussions with officials from the Department of Treasury and Finance (8 August 2005) confirmed that:

- all tenderers were advised that an independent NCP review would be conducted before the end of the five-year tender period

- the review would compare the costs and benefits of cross-subsidies, direct budget funded subsidies and no intervention.

On the basis of the future reviews to which the government committed when it announced the tenders on 20 April 2005, the Council assesses that Western Australia has met its NCP obligations.

---

[4] By contrast, the Queensland Government adopted a NCP compliant approach to intervention in certain thin regional aviation routes, which involves awarding periodic tenders on the basis of the lowest direct subsidy requirement. These fully transparent, costed and direct budget funded subsidies accord with COAG's principles for delivering community service obligations.

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 underway.

The drafting of template health legislation commenced in 2001, while a core practices discussion paper was released in March 2003. In its 2004 NCP annual report, the state advised that it anticipated introducing legislation in 2004. In its 2005 NCP annual report, it advised that divergent opinion is still among professionals affected by the recommendations from the core practices review. Consequently, it decided to introduce an interim package of legislation as a priority, which maintains existing practice restrictions but implements other reforms. Following this process, the government will further consider the recommendations of the core practices review and introduce separate amending legislation to deal with practice restrictions.

In June 2005, the government introduced an interim package of legislation comprising the Chiropractors Bill 2005, the Occupational Therapists Bill 2005 (which removes broad practice restrictions and provides for title protection for occupation therapists only), the Osteopaths Bill 2005, the Physiotherapists Bill 2005 and the Podiatrists Bill 2005. It is still finalising Bills for dental professionals, optometrists, nurses and psychologists. The government advised that it plans to introduce reforms for these professions to Parliament in 2005.

For 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 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 Dental Prosthetists Amendment Bill 2004 was introduced as a private members Bill to allow dental prosthetists to construct and fit partial dentures. In its 2005 NCP annual report Western Australia advised that this Bill lapsed in the Legislative Assembly on 23 January 2005. As noted above, however, it is finalising Bills for dental professionals, which it plans to introduce to Parliament in 2005.

Given that the state has not implemented template legislation, core practice or specific reforms, the Council considers that the state has not 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. The Western Australian Government accepted the recommendation of the review, and in its 2003 NCP annual report, advised the Council that it had commenced drafting a Bill that would limit controls on advertising to those reflecting consumer protection provisions (consistent with review recommendations) and remove ownership restrictions. Progress has been affected, however, by delays in the establishment of a State Administrative Tribunal. In its 2005 NCP annual report, the state advised that it has implemented the *State Administrative Tribunal Act 2004* establishing the tribunal.

Western Australia's reform progress in this matter has been slow. Given that Western Australia has not implemented reforms to its medical practitioner legislation, the Council considers that the state has not met its review and reform obligations for this profession.

Nurses Act 1992

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Nurses Bill 2005 to Parliament later 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 met its CPA obligations in relation to legislation regulating the nursing profession.

Optometrists Act 1940
Optical Dispensers Act 1966

Western Australia advised in its 2005 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 if a review finds no evidence that practices carried out by optical dispensers pose a risk of harm to the public, then the state would repeal this Act. The Optical Dispensers Repeal Bill 2005 was read for a second time in the Legislative Assembly on 18 May 2005.

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 considers that the state has not met its CPA obligations to review and reform legislation regulating optometrists.

Osteopaths Act 1997

Western Australia advised in its 2005 NCP annual report that it has introduced the Osteopaths Bill 2005 to Parliament 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, the state has not 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 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 all but one of the recommendations of the Wilkinson report as amended by the senior officials. 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 of November 2004 that.

> *Provided Western Australia, as a minimum, relaxes ownership restrictions to allow pharmacists to own up to four pharmacies each and permits … friendly societies to own up to four pharmacies each, Western Australia will not attract competition payments deductions.*

Accordingly, an individual pharmacist will be allowed to have a pecuniary interest in four pharmacies, with the same limit to apply to friendly societies. The government intends to review the expansion in the cap from two to four in two years.

As noted in the 2004 NCP assessment, 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, the state has failed to meet its CPA obligations in relation to this profession.

Physiotherapists Act 1950

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Physiotherapists Bill 2005 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 considers that the state has not met its CPA obligations to review and reform legislation regulating physiotherapists.

Podiatrists Registration Act 1984

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Podiatrists Bill 2005 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 considers that the state has not met its CPA obligations to review and reform legislation regulating podiatrists.

Psychologists Registration Act 1976

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Psychologists Bill 2005 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 yet been implemented, the state has not 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 advised in its 2005 NCP annual report that it intends to introduce an Occupational Therapists Bill 2005 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.

Without a robust public interest case, the Council does not accept the harm minimisation rationale because patients in jurisdictions that do not regulate occupational therapists do not appear to be at an increased risk of harm. 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 (Cwlth) 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 the pending Occupational Therapists Bill 2005, and because the state intends to retain title protection, the Council assesses that Western Australia has failed to meet its CPA clause 5 obligations in relation to occupational therapist legislation.

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 that COAG subsequently endorsed (out of session) in late 2004. Western Australia has already implemented some recommendations of the Galbally report in advance, including:

- 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.

Following the conclusion of interjurisdictional processes in 2004, the Western Australian Government endorsed drafting of the Poisons Amendment Bill to implement the Galbally recommendations. It expects to introduce the amendments to Parliament spring session of 2005.

Western Australia has previously demonstrated a commitment to meeting its CPA obligations by implementing those reforms that could be achieved without COAG's final response. The Council considers that other jurisdictions could also have considered such an approach. However, because the state (like other jurisdictions) has not completed its implementation of the Galbally recommendations, the Council assesses that Western Australia has not met its review and reform obligations in this area.

D Legal services

Legal Practitioners Act 1893

The *Legal Practice Act 2002* implemented many recommendations of the 2002 review of the Legal Practitioners Act. These included creating the capacity to allow incorporated legal practices and multidisciplinary partnerships. Further, the State Administrative Tribunal Act, which commenced on 1 January 2005, removed restrictions on the practice of tribunal related work and implemented changes to prescribe the arbitration services that nonlawyers may undertake. This change is consistent with the review recommendations.

The state also indicated that it will consider (in the context of national reforms) the review recommendation to codify the (then) existing practice of allowing practitioners to opt out of insuring through the Law Society if they can demonstrate to the Law Society that they have secured an appropriate level of professional indemnity insurance through other means. The discretionary power granted to the Law Society has since been shown to be beyond its legal authority. Consequently, the Western Australian Government has prescribed in Regulation all exemptions in relation to public indemnity insurance. While prescriptive, this approach largely maintains the status quo.

Western Australia implemented all recommendations from its NCP review of the legal profession except those being considered in the context of national reforms. While no discernible progress has been made to implement professional indemnity insurance reforms, the capacity of certain legal practitioners to be exempted from 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 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, as well as 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 amendments required to implement the review recommendations are yet to be drafted.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

Pawnbrokers and Second-hand Dealers Act 1994

The review of the Pawnbrokers and Second-hand Dealers Act 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. In its 2005 NCP annual report, Western Australia advised that it endorsed the recommendations of the review and prepared amending legislation which, will Cabinet will soon consider for introduction to Parliament.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

Real Estate and Business Agents Act 1978

Western Australia endorsed the review of the Real Estate and Business Agents Act in February 2003. The review recommended:

- retaining licensing to protect consumers against financial loss if 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, along with the requirement for board approval of franchise agreements
- requiring only one director or partner of a licensed partnership or body corporate to be licensed.

Legislation to give effect to the reforms has not yet been passed.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

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.

The government endorsed the findings of the national review on 23 June 2003 and the only outstanding element of the national review awaiting implementation is the repeal of the licensing exemption currently awarded to the Crown. A Bill to implement this reform is expected to be available for introduction to Parliament in the spring 2005 session.

The Council assesses that Western Australia has not met its CPA obligations in relation to travel agents legislation because it did not complete its reforms.

Auction Sales Act 1973

The NCP review of the Auction Sales Act in 2001 found that:

- Given the low barriers to entry into the auction industry, the small number of complaints per year and other consumer protection legislation regulating auctioneer conduct, the removal of auctioneer licensing would not significantly increase the number of complaints or decrease the level of consumer confidence concerning auctions.

- The provisions of the Act concerning conduct do not significantly rely on the licensing system for their enforcement or compliance.

- Although the costs of the licensing system (reduced competition, less innovation, higher prices) had been small, the benefits (greater consumer confidence, easier enforcement) could not be demonstrated to outweigh 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 , among other things, alternative mechanisms of regulation (such as negative licensing, registration or certification) to replace the Act's occupational licensing provisions. That general review is now complete. It reassessed the

restrictions that the Act imposes on competition and recommended retaining the existing licensing requirements in the public interest.

Western Australia has provided the Council with a confidential copy of a government position paper that incorporates the findings of both reviews. The Council does not accept the position paper's public interest case (presumably based on the findings of the general review) for retaining licensing in opposition to the recommendation of the NCP review. The Council thus assesses that Western Australia has not met its CPA obligations in relation to legislation regulating auctioneers.

Settlement Agents Act 1981

Western Australia has legislation permitting nonlawyers to undertake certain activities traditionally reserved for legal practitioners, including conveyancing. The NCP 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. The review found that maximum fees can (not will) result in additional costs to both agents and consumers but it also found that the costs are likely to be minor.
- 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. However, in its 2005 NCP reporting, Western Australia has stated that the provisions for setting maximum fees which may be charged by licensed settlement agents will not be repealed. Instead, the state has amended its Regulations to lift the maximum allowable fee charged for settlement services. Other required amendments to the Act are yet to be drafted. Western Australia considered that maximum fees provide protection for consumers from the disadvantages of information asymmetry that arise in settlement transactions and which leave consumers vulnerable to over-charging. In addition, Western Australia noted that many real estate and business agents in Western Australia have a direct financial interest in a settlement agency and will recommend that clients appoint an affiliated settlement agency to complete settlement of a real estate purchase. The convenience that this provides for consumers in what can be a complex and daunting process is a major incentive for them to agree to such an arrangement. In addition, some banks, building societies and other sources of finance operate settlement agencies and consumers may feel

using the financier's settlement agency will increase their chances of obtaining finance. For these reasons, Western Australia considers that market forces will not necessarily operate in consumers' interests.

The Council is not convinced by Western Australia's arguments. The Council notes, for example, that conveyancing charges are unregulated in most other jurisdictions without detriment to consumers and that many lending institutions have an interest in insurance providers without this being seen to endanger the interests of consumers seeking to purchase insurance. For these reasons, and because Western Australia is yet to complete its reforms, the Council assesses it as not having met its CPA obligations in this area.

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

The Hairdressers Registration Act applies to hairdressers working in the Perth metropolitan area, in the South West Land Division and within an 8-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 NCP assessment, the Council maintained its position. It found that additional information from Western Australia did not demonstrate a net public benefit from the regulation, only that registration leaves consumers in regulated areas no worse off than those in unregulated areas. In the Council's view, consumers are offered adequate protection by the requirement for hairdressers to hold appropriate qualifications (without requiring registration), in conjunction with general health and safety obligations.

Western Australia stated that it does not intend to repeal or amend this legislation. The Council thus maintains its previous assessments that Western Australia has not complied with its CPA obligations in this area.

F1 Compulsory third party motor vehicle and workers compensation insurance

Motor Vehicle (Third Party Insurance) Act 1943

Not assessed (see chapter 9).

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.[5]

- 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 that implements the above change.

The Bill was rejected by the Legislative Council, however, on 19 August 2004. In its 2003 and 2004 NCP assessments, the Council did not consider that the changes announced by the Western Australian Government, retaining restrictions until 2005, constituted an appropriate transitional reform measure underpinned by a public interest case.

In 2005, Western Australia conducted a referendum whether to extend trading hours. In the referendum, voters were asked to assess separately whether the Western Australian community would benefit if general retail trading hours in the Perth metropolitan area were extended to allow trading until 9 pm on weeknights, and for six hours on Sundays. Prior to the referendum, the Western Australian Electoral Commission prepared and published comprehensive arguments supporting the 'Yes' and 'No' cases for the two questions. This information was provided in addition to the debate between proponents of both cases. In the referendum, 58 per cent of voters supported the 'No' case on the issue of extended weeknight trading and 61 per cent of voters supported the 'No' case on the issue of Sunday trading.

The Treasurer of Western Australia subsequently wrote to the Council, advising that Western Australia had decided not to address restrictions in the state's retail trade legislation because the referendum had established the public interest for the restrictions, thereby fulfilling the requirements of CPA clause 5. The letter advised that the Council, to conclude otherwise, would have to assume that it knows more than the public about Western Australia's public interest.

Clause 5 of the CPA obliges governments to review and, where appropriate, reform all existing legislation (at June 1996) that restricts competition. It requires governments to remove restrictions on competition unless they can demonstrate that the restrictions are warranted—that is, that restricting competition benefits the community overall (being in the public interest) and

[5] The Act distinguishes 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.

that the restriction is necessary. The Council has consistently stated that it considers that independent, transparent and objective reviews provide the best opportunity to assess all costs and benefits of restrictions on competition.

The Council is also mindful of COAG's (2000) directive to consider whether review conclusions are within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Any public interest case for competition restrictions thus needs to be supported by relevant evidence and robust analysis. Where a government introduces or retains competition restrictions, and this action was not reasonably drawn from the recommendations of a review, the Council looks for the government to provide a rigorous supporting case, including a demonstration of flaws in the review's analysis and reasoning.

The Council considers that conducting a referendum does not absolve a government from its NCP legislation review obligations. The Council thus retains its previous assessment that Western Australia has not met its CPA clause 5 obligations in relation to the regulation of shop trading hours.

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 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 when it became clear that they would not be passed by the Legislative Council. Instead, Western Australia decided to undertake an independent review of the legislation. In September 2004, the government appointed a review committee, which called for public submissions in October 2004. The Committee has now presented its report, which recommends:

- replacing the needs test with a public interest test. Under the proposed public interest test, applicants would be required to demonstrate that their application is in the interest of the public, having regard to the likely health and social impacts on the community and sub groups within the community.
- allowing liquor stores to trade between 10 am and 10 pm on Sundays. The review was mindful of the important social role played by hotels in small country towns, and recommended that there be provision for local government in small rural towns to conduct a poll on Sunday trading by liquor stores. If the poll does not support Sunday trading, the review recommends that the licensing authority be able to prohibit such trading.

The government is considering the review recommendations.

The Council notes that these recommendations are broadly similar to those of the previous NCP review and appear to be consistent with the NCP. However, because Western Australia has not completed its reform activity, the Council confirms its assessment that Western Australia has not met its CPA clause 5 obligations for liquor licensing.

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)
- the mandate that price boards 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, the variation of price cycles had not materially changed and the duration of price cycles 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.

Since that assessment, Western Australia has provided the Council with material in correspondence and in its NCP annual reports to support its position that the restrictions provide a net benefit to the community. Western Australia's position was outlined in the Council's 2004 NCP assessment.

The Council is confronted with divergent views concerning the public benefits of the restrictions. Assessing the impact of the restrictions is a task of some complexity, and the Council proposed in its 2004 NCP assessment that such an evaluation be undertaken by an independent review, using the considerable evidence available since the legislation was introduced.

In its 2005 NCP annual report, Western Australia indicated that it would consider a review in mid-2005, following an analysis of retail site data by its Department of Consumer and Employment Protection. However, the government has now stated that it has no immediate plans to instigate an independent review of its legislation (Government of Western Australia, 2005b, p. 20). The government considers that it has provided sufficient evidence to address the Council's concerns and to demonstrate the benefits of the legislation.

The Council's position remains unchanged from 2004. It considers that Western Australia is yet to conclusively demonstrate that its petrol pricing restrictions provide a net public benefit, and its concerns were heightened by fines imposed on a retailer in July 2005 for lowering price. Such an outcome does not appear to promote competition and consumer interests. The Council thus confirms its 2004 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

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
- retaining the Act's remaining restriction on competition, which relates to parties' representation in proceedings before the Retirement Villages Disputes Tribunal.

Fifteen of the 47 review recommendations have been implemented via legislative change, and four were for the retention of the status quo. Western Australia is proposing to draft legislation to enact the remaining recommendations.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because the state did not complete 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. Western Australia intends to draft legislation to enact these reforms but it indicated that it will not finalise its legislative response until it has also assessed the impact of the rapid growth of unlicensed credit providers in the state.

The Council assesses that Western Australia has not met its CPA clause 5 obligations in this area because it has not completed its reforms.

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.

I3 Gambling

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. The government 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 advised that it had 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 expressed reservations about both arguments. There is already easy access to totalisator outlets throughout Western Australia. The 2004 NCP annual report even claimed that 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 maintains its assessment that Western Australia has not 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

The Betting Control Act restricted the business structures of bookmakers and set minimum telephone and Internet bet limits with bookmakers. Western Australia completed a review of the Act and replaced it with new legislation, the *Betting Legislation Amendment Act 2002*. The new Act 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 Council assesses that Western Australia has met its CPA clause 5 obligations in relation to this legislation.

Racing Restrictions Act 1917
Racing Restrictions Act 1927

Western Australia's racing restriction Acts restricted racing to thoroughbred, harness or greyhound racing. Western Australia completed reviews of the two Acts and replaced them with new legislation.

The racing restrictions Acts have been repealed and replaced with the *Racing Restrictions Act 2003*. The new Act allows for non-thoroughbred racing under specified conditions.

The Council assesses that Western Australia has met its CPA clause 5 obligations in relation to this legislation.

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 provisions 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 advised that it would take 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.

In its 2004 NCP assessment, the Council expressed reservations about both arguments. The Council noted that there is already easy access to lottery outlets throughout Western Australia. Western Australia even claimed, 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.

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 become the *Gaming and Wagering Commission Act 1987*. A review of the original 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.

In its 2005 NCP annual report, Western Australia advised that it has been unable to reach an acceptable position on the first two recommendations via negotiation with the Burswood Casino. It thus considers these matters to be finalised. The third and fourth recommendations do not require further action on the part of the government.

Progress was made towards amending the Act to licence professional fundraisers. However, during the initial drafting, the government noted that similar provisions were being prepared for inclusion in the Public Collections Bill, which is being drafted.

The latter recommendation (which introduces a new restriction) is the only review recommendation on which the government is yet to act. The Council thus assesses Western Australia as 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

These three 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. It 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. It 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. However, the Bills lapsed when Parliament was prorogued on 25 January 2005. They were introduced into the post-election Parliament Legislative Assembly on 7 April 2005 and received their second reading in the Legislative Assembly on that day. The Bills received their Third Reading on 5 May 2005. They were passed to the Legislative Council on 18 May 2005 where they remain at the Second Reading stage.

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. 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.

Western Australia noted in its 2004 NCP annual report that the Productivity Commission is conducting a research study (to be completed in November 2004) into the contribution of national building regulatory reform (under the auspices of the Australian Building Codes Board) 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 stated that it will await the national review of the code before implementing its new building legislation.

In the meantime, the government intends to amend the Local Government (Miscellaneous Provisions) Act to introduce contestable certification services for building approvals. The amending legislation is yet to be introduced to Parliament.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because it did not complete 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 Architects Act 2003 passed both Houses of Parliament on 26 November 2004 and received assent on 8 December 2004. In keeping with the review recommendations, the new Act:

- broadens membership of the Architect's Board to include industry, consumer and educational representatives
- protects title only but does not include restrictions on practice
- restricts the title 'architect' to registered persons only, but permits derivatives that describe a recognised competency (for example, landscape architect or architectural draftsperson)
- requires organisations that offer the services of an architect to have adequate arrangements to ensure an architect supervises, controls and is ultimately responsible for the architectural work provided
- moves registration requirements to the Regulations and refers 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 Act is proposed to be proclaimed to come into operation simultaneously with the gazettal of supporting Regulations. Although the Regulations are still being drafted, Western Australia has assured the Council that the Regulations will not introduce any restrictions contrary to NCP principles and has provided the Council with a summary of their proposed contents.

The Council is thus able to assess Western Australia as having met its CPA clause 5 obligations in relation to architects legislation.

Water legislation

For the 2004 NCP assessment, Western Australia was the only jurisdiction that had significant remaining obligations in relation to the review and reform of water legislation. The outstanding water legislation formed part of the state's 'pool' suspension (NCC 2004, p. xix).

The Western Australian Government reviewed 32 pieces of water industry legislation. The reviews recommended repealing one instrument and reforming 18 others. For the remaining 13 pieces of legislation, the reviews either found no significant competition issues or recommended that no change was required.

At the time of the 2004 NCP assessment, Western Australia reported that it had completed none of the recommended reforms, but was reviewing the Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1993 as part of a wider review of health industry legislation. In its 2005 NCP annual report (and in subsequent follow-up discussions with the Council), Western Australia advised that it:

- is not yet able to consider changes (not related to competition issues) in two of the irrigation By-laws (Ord and Carnarvon) as environmental water entitlements, community aspirations and native title issues are not yet settled

- intends to reform seven pieces of outstanding water industry legislation via the Water Legislation Amendment (Competition Policy) Bill 2005—which passed through the Legislative Assembly on 30 June 2005 and is being considered by the Legislative Council. The Country Areas Water Supply (Amendment) By-laws 2005 implementing the review recommendations were tabled in Parliament in May 2005.

- has, in accord with review recommendations, amended the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981 and the Water Agencies (Preston Valley Irrigation Services) By-laws 1969, and repealed the Rights in Water and Irrigation (Construction and Alternation of Wells) Regulations 1963 and the Irrigation (Dunham River) Agreement Act 1968

- has committed to reform the remaining regulatory instruments.

Western Australia completed its review of water industry legislation several years ago, but has implemented only four of the 19 recommended reforms. Consequently, the Council assesses that Western Australia has not met its NCP reform obligations relating to water industry legislation.

Non-priority legislation

Table 14.1 provides details on non-priority legislation for which the Council considers that Western Australia's review and reform activity does not comply with its CPA clause 5 obligations.

Table 14.1: Noncomplying review and reform of Western Australia's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Agricultural Products Act 1929 and Regulations	Restricts sale, movement and destruction of chemically affected produce. Requires analysts to have minimum qualifications.	Not on WA's review schedule but reviewed as part of the national review of agricultural and veterinary chemicals.	Act is to be replaced by the Agricultural Management Bill being drafted. However, the government will replace the Act with Regulations under the proposed Biosecurity and Agriculture Management Bill , currently being drafted.
Artificial Breeding of Stock Act 1965	Restricts premises for supplying semen and other reproductive material. Licenses artificial breeders. Restricts importation of reproductive material.	Review by officials, in conjunction with review of other agricultural protection Acts, completed. Review recommended: • repealing all restrictions • introducing new, less restrictive regulations on the control of diseases • providing for voluntary licensing of artificial breeders.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.
Beekeepers Act 1963	Requires registration of all beekeepers and branding of hives. Restricts importation, antibiotic use and testing. Imposes standards on honey.	Review by officials, in conjunction with review of other agricultural protection Acts, completed. It recommended retaining all restrictions except to reconsider those relating to honey standards and nuisance provisions.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Caravan Parks and Camping Grounds Act 1995	Provides for licensing.	The Caravan Parks and Camping Grounds Advisory Committee, a committee comprising government and industry representatives, considered restrictions in both the Act and associated Regulations. Review found that Regulation 49, which prohibits the issue of a licence for a transit park or a nature based park if a licensed caravan park or camping ground is within 50 kilometres, should be removed. The review also recommended a further review.	Amending legislation is to be drafted. A further review was to be completed by 30 June 2004. Review was endorsed by the Government, which decided to remove Regulation 49. A re-review of section 3(1) is underway.
Cattle Industry Compensation Act 1965	Establishes powers for nominated persons to inspect and destroy cattle for the purposes of disease control. Provides for raising a levy on the sale of cattle.	Review by officials completed in 1998. It recommended: • retaining the restrictions • amending the Act to ensure compensation is paid only for animals destroyed as a result of a control program that is of a 'sufficiently public good nature'.	This legislation was to be repealed when planned legislation for grazing industry health protection funding was drafted during 2003-04. Repeal is now expected this year.
Charitable Collections Act 1946 and Regulations	Provides for licensing.	Review not required.	This Act will be repealed upon enactment of the Public Collections Bill. This Bill was expected to be introduced to Parliament during 2004, but had not yet been introduced at July 2005.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Coal Industry Superannuation Act 1989	Contains restrictions on competition and mandatory contributions.	The Review of the Act was endorsed by government in February 2003. The review found that clause 22, providing government assistance for the Coal Industry Superannuation Fund, should be removed because it restricts competition by conferring a competitive advantage on the fund. The review also considered clauses 14 and 15, setting out mandatory contributions to the fund from members and employers. The review concluded that these restrictions were in the public interest due to economies of scale and reduced administration costs, and should be retained.	The Coal Industry Superannuation Amendment Bill 2005 received its second reading in the Legislative Council in May 2005 after passing the Legislative Assembly. The Bill removes unjustified restrictions on competition.
Consumer Credit (Western Australia) Act 1996	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 (UCCCMC), which is facilitating the resolution of some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation; this legislation will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Cooperative and Provident Societies Act 1903	Provides for licensing.	Act recommended for repeal.	This Act will be repealed upon the enactment of the proposed Co-operatives Bill. The Co-operatives Bill had an AO4 priority for introduction to Parliament in the autumn session 2004. It is now expected to be introduced sometime in 2005.
Fertilisers Act 1977	Requires retailers to clearly label fertilisers and to handle them in such a way as to avoid contamination.	Review completed in 1997. It recommended amending the Act to apply only to those fertilisers that pose a risk to agriculture, and using less restrictive means to achieve the same objectives for other fertilisers. The government endorsed the recommendations of the review in 1997.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.
Health (Asbestos) Regulations 1992	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Health (Cloth Materials) Regulations 1973	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Health (Construction Work) Regulations 1973	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Health (Drugs and Allied Substances) Regulations 1961	Provides for licensing.	Part of Galbally national review. The final Galbally report was given to the Australian Health Ministers' Council (AHMC) in early 2001.	The Australian Health Ministers Advisory Council (AHMAC) established a working party to develop a draft response to the Galbally report for COAG consideration. The working party's draft response, which AHMAC endorsed, was considered by the Primary Industries Ministerial Council before being forwarded to COAG. The AHMAC endorsed the response out of session in October 2003, and COAG was expected to consider the response, together with the Galbally report, in 2004.
Health (Pesticides) Regulations 1956	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (Pet Meat) Regulations 1990		Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (Public Buildings) Regulations 1992	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (School Dental Therapists) Regulations 1974	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health Act (Swimming Pools) Regulations 1964	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997	Provides for licensing.	The NCP review of the *Hospitals and Health Services Act 1927* includes these Regulations.	Review to commence in 2005-06.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Hospitals (Service Charges) Regulations 1984	Provides for licensing.	The NCP review of the *Hospitals and Health Services Act 1927* includes these Regulations.	Review to commence in 2005-06.
Hospitals and Health Services Act 1927	Controls movement of firms or individuals into or out of the market for private sector health services (e.g. number of private hospital bed numbers at a facility and specifications of buildings). Fees charged for private patients treated in public hospitals are determined by the Governor.	An NCP review of this Act was completed in May 2001 and endorsed by the Expenditure Review Committee and Cabinet in December 2001. In 2005 the government advised that another review of the Act will commence in 2005-06.	

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Mutual Recognition (Western Australia) Act 1995		A national review was completed in 1998. The Productivity Commission completed a research study of the Trans-Tasman Mutual Recognition Agreement (TTMRA) that was released in October 2003. The key finding was that the TTMRA has been effective overall assisting the integration of the Australian and New Zealand economies and promoting competitiveness. A number of special exemptions from the TTMRA that relate primarily to public safety: therapeutic goods, hazardous substances, industrial chemicals and dangerous goods, consumer product safety standards, road vehicle standards, gas appliances standards, electromagnetic compatibility and radiocommunications standards. The Productivity Commission recommended that many of the exemptions should remain, because mutual recognition would erode justified regulatory differences.	In May 2004, COAG and the New Zealand Prime Minister noted 29 of the Productivity Commission's findings and requested further work on the remaining 45 by a cross-jurisdictional Review forum. The forum has completed its report. Western Australia awaits endorsement of that report before implementing any required legislative amendments in line with national arrangements.
Offensive Trades (Fees) Regulations *1976*	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Piggeries Regulations 1952		Review underway as part of the review of the *Health Act 1911*.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Plant Pests and Diseases (Eradication) Fund Act 1995	Establishes power of minister to impose levies and ministerial discretion over application of funds.	Review by officials completed in 1997. It recommended amending the Act to ensure levies fund only services that are of a sufficiently public good nature and that have been assessed as in accordance with a benefit–cost method.	The existing legislation is expected to be repealed this year.
Seeds Act 1981 and Regulations		Review completed.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill, which was scheduled for introduction in 2004.
Stock (Identification and Movement) Act 1970	Provides for branding of human food and fibre producing animals. Requires documentation when moving stock.	Review by officials completed. It found some scope for easing restrictions on horse owners.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill, which was scheduled for introduction in 2004.
Street Collections Regulation Act 1940 and Regulations	Provides for licensing.	Review not required.	These Acts will be repealed upon enactment of the Public Collections Bill. This Bill is expected to be introduced to Parliament during 2005.
Suitors Fund Act 1964	Provides for differential treatment of large companies and Crown agencies.	Review completed in 1997. The review noted that all litigants are required to contribute to a fund used to defray legal costs where a court decision is reversed on a 'point of law' appeal or where the proceedings are aborted. However, companies with a paid-up capital of $200 000 or more and Crown agencies are barred from accessing the fund to recover such legal costs. Review recommended removing the bar on companies with paid-up capital of $200 000 or more.	This Act is being subjected to a further review chaired by the Solicitor-General.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustees Companies Act 1987	Provides for licensing.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

15 South Australia

A1 Agricultural commodities[1]

Barley Marketing Act 1993

The *Barley Marketing Act 1993* prohibited the sale or delivery of barley grown in South Australia to anyone other than the Australian Barley Board. The Act also prohibited competition in the acquisition of oats grown in the state.

In 1997 a review of the Act and Victoria's matching legislation by the Centre for International Economics estimated that the Acts imposed a net cost on the community of $8.5 million per annum. It recommended that the government:

- remove the domestic barley marketing monopoly and the oats marketing monopoly;
- retain the export barley marketing monopoly for only the 'shortest possible transition period';
- restructure the Australian Barley Board as a private grower-owned company.

By mid-1999, the domestic marketing monopoly was removed, the Australian Barley Board was transferred to grower ownership as ABB Grain Limited and the South Australian Parliament amended the Act to sunset the export monopoly over barley from July 2001.

The Parliament subsequently removed the sunset, however, following the release of analysis prepared for ABB Grain Limited by economic forecasters and advisers Econtech. This analysis concluded that the export monopoly benefited the community by $15 million per annum – principally via premium prices on exports of feed barley to Japan. The sunset was replaced by a review after two years.

In Victoria the sunset proceeded and from July 2001 Victorian growers enjoyed competition between traders to acquire their barley as well as the pools that ABB Grain Limited continued to operate.

---

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

The government commissioned a new review of the barley export monopoly in November 2002. The review was conducted by a three-member panel—led by Professor David Round of the University of South Australia, and included a former senior State Government official and the deputy chair of the Grains Council of South Australia—and charged with determining whether the single desk is clearly and credibly in the public interest. In June 2003 the review panel reported that:

> *…it has not demonstrated to the Panel's satisfaction in any convincingly rigorous way that the single desk delivers benefits to the Australian community as a whole that outweighs the costs, and that the objectives of the legislation in granting single desk powers to ABB can only achieved by restricting competition.* (Round et al. 2003, p. 73)

The panel recommended 'controlled deregulation' in which the single desk is exposed to competitive challenge through reform—along the lines of Western Australia's Grain Marketing Act—whereby ABB Grain Ltd would retain a principal barley export licence and, a year after the passage of reform legislation, an independent authority would license barley exports by other marketers that the authority determines do not threaten the price premiums that ABB Grain Ltd achieves as a result of its market power.

In June 2004 the government introduced into Parliament a bill which would deregulate barley exporting in bags and containers while licence bulk exports. The main export licence would be held by ABB Grain Export Limited while other exporters could apply to an authority for special export licences. However this bill lapsed and, notwithstanding some discussions between the government and grower representatives about reform proposals, has not been re-introduced.

The Council assesses that South Australia is still to meet its related CPA clause 5 obligations. South Australia will have met these obligations when it has implemented the recommendations of the 2003 NCP review.

A3 Fisheries

Fisheries Act 1982

The Fisheries Act regulates fishing in South Australian waters via controls on access to fisheries, controls on inputs and, in some cases, controls on output. The major commercial marine species fished in the state are prawns, rock lobster, abalone, whiting, snapper, garfish, yellow-eye mullet, squid and shark.

The 2004 NCP assessment found that South Australia had not met its CPA clause 5 obligations arising from the Fisheries Act because the following competition restrictions even though the 2002 NCP review had not shown them to be in the public interest:

- licence holders in the marine scale fishery or the Lakes and Coorong fishery are prohibited from holding a further licence in these fisheries, or in another fishery, unless they are the registered vessel master

- licences have a term of just one year

- other restrictions exist specific to certain fisheries, such restrictions on quota holdings and transfers, and on numbers of personnel.

The government had earlier removed some restrictions, such as 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 clarified that foreign ownership of fishery licences is permitted, although the Act allows for it to be prohibited.

Following a general review of the Act, the government is preparing replacement legislation which it intends to introduce to Parliament in August 2005. This legislation will align the term of fishery licences to that of the statutory management plan for the respective fishery. It will not, however, address:

- ownership restrictions remaining in the marine scale fishery and the Lakes and Coorong fishery—the government argues that these restrictions help to control fishing effort and support the economic and social health of small coastal communities, but has not satisfied the Council that there are no feasible alternative measures that do not restrict competition

- other restrictions specific to certain fisheries—the government has refused to remove some restrictions (for example, rock lobster pot limits) without industry support for their removal.

Given that the government is still to address these remaining restrictions, the Council assesses that South Australia has not fully met its CPA clause 5 obligations arising from the Fisheries 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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. While South Australia initially thought that changes to the Agricultural and Veterinary Chemicals (South Australia) Act would be required as a result of changes in the Australian Government Acts, the Legal Unit of the Australian Pesticides and Veterinary Medicines Authority advised the state that no changes to South Australia's legislation are expected or required. South Australia, therefore, considers that its legislation is NCP compliant.

The Council accepts that South Australia may not require further legislative reforms in this area; other jurisdictions may be in a similar situation. However, as the Council has noted, because the Australian Government has not finalised legislation to revise the national Agricultural and Veterinary Chemicals Code, reform of state and territory legislation that automatically adopts the national code has not been completed. The Council, therefore, must assess that South Australia has not met its CPA obligations in relation to this legislation.

A9 Mining

Opal Mining Act 1995

The Opal Mining Act prohibits corporations from entering an area of the Coober Pedy precious stones field known as the Major Working Area to prospect or mine (s13 of the Act). The 2002 NCP review of the Act recommended the removal of this restriction. The government is preparing an amendment to remove the restriction, which it expects to be in force by December 2005.

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.

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 was 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 legislative discretion was not sufficient for compliance with CPA clause 5 obligations.

This finding was based on the government having used its discretion to release no licences between the 1999 review and mid-2002: the number of general taxi licences has remained at 920 since 2001.[2] In 2005, the South Australian Government (for the first time) challenged the view that licence numbers have remained static since 2001. It stated that 15 general licences with conditions related to the provision of disability accessible taxi services were offered in 2001 but only three were taken up, which could be taken as evidence of a saturation point in the taxi market. The Council recognises the importance of ensuring that people with disabilities have access to taxi services. However, failure to take up such licences is not necessarily indicative of saturation in the taxi market. For example, the capital costs of wheelchair accessible taxis and the associated conditions mean that this form of licence tends to be less in demand than unrestricted licences. (A similar situation arises in New South Wales were the former unrestricted licences are traded at very high prices, whereas licences currently on offer, although not subject to any quantity restriction, are not favoured by the market because of the more restrictive provisions attached.)

This stagnation in numbers has been accompanied by an increase in the average value of taxi plates from $137 000 in the first half of 2003 to around $162 000 in 2004. Licence transfers in early 2005 were in the range $165 000 to $195 000 (Government of South Australia 2005, p. 75).

There has been free entry to the hire car market since 1991, and although hire cars cannot use ranks or respond to hails, they have made a significant contribution to the overall supply of chauffeured passenger transport services. In its 2005 NCP annual report, the South Australian Government submitted that 'given unrestricted numbers, hire cars provide a well established alternative source of transport competing directly with taxis for pre-booked transport services' (Government of South Australia 2005, p. 24). The government estimated that the pre-booked market had represented 80 per cent of the taxi business before the development of hire car services, but it now represents around 55 per cent. It considers, therefore, that hire cars can service any demand in the pre-booked market that is unmet by the taxi industry. It thus contends that the impact of taxi licence restrictions is relevant only for rank and hail services.

The government has committed to review the industry before the next election in 2006. It is current government policy to maintain a freeze on the issue of any new taxi licences. This freeze is predicated on concerns about low driver remuneration; other reviews, however, have highlighted the direct link between the impact of plate values on lease rates and thus low driver remuneration. The pending review will not be a NCP review, although the government's 2005 NCP annual report notes that the review 'will form an open and transparent evaluation of existing services and future demand' (Government of South Australia 2005, p. 24). The terms of reference are expected to include an assessment of the need for additional taxi licences,

[2] There are also 70 wheelchair accessible licences and 57 standby licences.

benefits to the public, competition for taxis from other passenger modes, and the roles of different licence categories.

The Council accepts that the de-restriction of hire cars has reduced the impact of restrictions on taxi releases. However, hire cars are not fully substitutable with taxis, and the Council has no independent evidence to conclude that the market is competitive. In 2005, the South Australian Government cited recent studies that indicated that patronage for taxi services had declined and that 'in relation to ply for hire (rank and hail taxi services) observations indicate that on average taxi drivers wait longer for passengers than passengers for taxis'. The Council notes that this observation is not particularly compelling as it can be translated to most competitively provided services (ie service providers wait longer for customers than vice versa.)

To demonstrate compliance with its CPA obligations, South Australia must undertake an independent review of its taxi and hire car legislation that tests all remaining restrictions on competition against the CPA clause 5 guiding principle. And, where appropriate, it must reform the legislation.

The Council assesses that South Australia has not met its CPA obligations in relation to its taxi legislation.

B2 Tow trucks

Motor Vehicles Act 1959

South Australia completed a review of the accident towing provisions in the Motor Vehicles Act and the Accident Towing Roster Scheme Regulations in 2000. The government released the review report for public comment in November 2003.

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 positions. 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 in the roster for a specific zone.

The government released its response to the NCP review in July 2004, indicating that it will accept the recommendation to remove limits on the number of operators who can participate in the accident towing roster for a particular zone. In August 2004, South Australian officials informed the Council that amendments to Regulations will be made by the end of 2004. The amendments were anticipated to:

- retain the roster system but remove the Accident Towing Roster Review Committee's control of which companies appear on the roster
- provide for any tow truck company to be on zone rosters subject to it meeting quality and probity requirements
- abolish the Accident Towing Roster Review Committee.

South Australia's 2005 NCP annual report stated that Regulations to implement the government response have been developed and discussed with towing industry associations. Following these discussions, the government is investigating suggested modifications to the scheme, and this process is delaying the finalisation and implementation of the Regulations.

Given this delay, the Council assesses that South Australia has not met its CPA obligations in relation to its tow trucks legislation.

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 the drafting of a Bill to implement these recommendations and, after consultation with stakeholders, that approval would be sought to introduce the Bill to Parliament in the second half of 2003. At the time of the 2004 NCP assessment, a Bill had not been introduced, but a draft Chiropractors and Osteopath Practice Bill 2004 was available for public comment. The House of Assembly passed the Bill on 11 April 2005, which received assent on 15 July 2005 and was proclaimed on 4 August.

The new Act implements the recommendations of the NCP review. Among other things it establishes a single board for both chiropractors and osteopaths. This is in line with recommendations of the review, which concluded that it was not practical to enact separate legislation for osteopaths because of a very small number registered in South Australia (there are 10

registered osteopaths and another 46 people practising as both chiropractor and osteopath). The Act does, however, recognise osteopaths as a profession distinct from chiropractors, and it provides separate definitions of chiropractic and osteopathy and establishes separate registers for each profession. Provisions in the Act also require students undertaking training in chiropractic or osteopathy to register with the board prior to undertaking any clinical work in the state. This provision ensures that all people practising in the field in South Australia are subject to the same professional standards and codes of conduct.

South Australia has met 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 the new Dental Practice Act. This Act implements most of the recommendations of the review, but not 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 and 2005 NCP annual reports that the governor had granted exemptions for all applications processed. The government published approvals in the South Australian *Government Gazette*.

South Australia has advised that it consulted with stakeholders on a proposed amendment to the Dental Practice Act 2001 to remove ownership restrictions, consistent with the amended *Medical Practice Act 2004*. Approval to table an amending Bill will be sought from Cabinet in October 2005.

Given that reforms to dental practitioner legislation are incomplete, the Council assesses that South Australia has not met its CPA obligations in this area. However, the current exemption provisions mean that the ownership restrictions are unlikely to impose significant costs on the community.

Medical Practitioners Act 1983

South Australia's 1999 review of the Medical Practitioners Act recommended removing ownership restrictions. 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 introduced a new Bill to Parliament in 2004. The Medical

Practice Act 2004 received assent on 16 December 2004 and has been proclaimed. The Act removes existing ownership restrictions and includes provisions to protect the public (a code of practice, for example) without restricting entry into the market. In short it implements the key recommendations of the NCP review.

South Australia has met its CPA clause 5 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. It also recommended that optometrists legislation be extended to cover optical dispensers. The Council's 2003 NCP assessment considered that the review recommendations appeared consistent with the state's CPA obligations. By the time of the 2004 NCP assessment, however, South Australia had not implemented the reforms. In its 2005 NCP annual report, South Australia advised that consultation on a draft Bill has been completed and the issue is before the Minister for Health. In September 2005 South Australia advised that the government expects to table the Optometry Practice Bill during the current parliamentary session as soon as it resolves matters arising from the public consultation.

Given that the reforms have not been implemented, South Australia has not met its CPA clause 5 obligations in relation to the optometry profession.

Pharmacy Act 1991

Council of Australian Governments (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 in the Pharmacy Act.

On 3 August 2004, South Australia received a letter from the Prime Minister that noted that the state would not attract competition payment deductions if it implemented similar reforms to those of New South Wales. The Prime Minister also stated that competition payments would not be contingent on whether South Australia pursued its proposal to allow National Pharmacies to increase its ownership from 31 to 40 pharmacies.

On 15 September 2004, the Council received advice from South Australia that its Parliamentary Counsel was drafting amendments to the Pharmacy Act consistent with the advice from the Prime Minister to:

- increase the number of pharmacies that 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.

South Australia is consulting with stakeholders on this reform proposal. 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 that both pharmacists and friendly societies can own.

However, these proposed reforms fall short of those required by COAG national review processes because COAG outcomes require the removal of restrictions on the number of pharmacies that a pharmacist can own.

South Australia has not implemented, and does not intend to implement pharmacy regulation reforms consistent with COAG requirements. Consequently, it has failed to meet its CPA obligations in relation to the pharmacy profession.

Physiotherapists Act 1991

South Australia completed a review of the Physiotherapists Act in February 1999. In relation to the NCP, the review recommended that the government replace broad practice restrictions with core practice restrictions, and remove ownership restrictions. The *Physiotherapy Practice Act 2005* implements the review recommendations. The new Act follows the template of the Medical Practice Act and complies with CPA obligations.

South Australia has met its CPA clause 5 obligations in relation to this legislation.

Chiropodists Act 1950

The recommendations of the 1999 review of South Australia's Chiropodists Act include limiting practice reservation and removing ownership restrictions. Both houses of the South Australian Parliament passed the Podiatry Practice Bill 2004 on 11 April 2005. South Australia has since advised that the Act has been proclaimed. The Act implements the recommendations of the 1999 review.

South Australia has met its CPA clause 5 obligations in relation to this legislation.

Psychological Practices Act 1973

South Australia completed its NCP review of the Psychological Practices Act in 1999. It recommended removing advertising and practice restrictions. South Australia is consulting with stakeholders on a draft Bill and expects to seek Cabinet endorsement to table the Bill in October 2005.

South Australia has not met its CPA clause 5 obligations in relation to this legislation because it has not yet implemented the reforms.

Occupational Therapists Act 1974

The key restriction of the Occupational Therapists Act's 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 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 which can easily assess the capabilities of its staff. 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. In the 2003 NCP assessment, therefore, 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 tabled the Occupational Therapy Practices Bill 2005, which retains title restriction, the Council reconfirms that the state will not meet its CPA obligations when it amends its occupational therapists legislation. 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.

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's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of CoAG's endorsement.

South Australia has previously advised of its intention to implement the review recommendations following their endorsement by CoAG. One recommendation—the removal of manufacturer and wholesaler licensing for S5 and S6 poisons—is to be progressed by amending the Regulations during 2005.

The Council acknowledges that implementation of the Galbally reforms is imminent. However, because the reforms are still outstanding, the Council assesses that South Australia did not meet 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 the recommendations from its NCP review of the legal profession, except for permitting multidisciplinary practices. South Australia has examined this issue, including potential ethical impacts, as part of the national model law processes (see chapter 19). It signed a memorandum of understanding among all Australian Attorneys-General, agreeing to adopt the model laws. However, South Australia has not committed to adopt provisions for multidisciplinary practices and incorporated legal practices, because it is concerned that professional ethical obligations cannot be adequately protected in these structures.

Existing restrictions on professional indemnity insurance are also being considered in the context of the national model law processes.

South Australia has failed to meet its CPA obligations in relation to the legal profession because it is not adopting the national model provisions for multidisciplinary practices and incorporated legal practices. and because it is yet to remove restrictions on professional indemnity insurance.

E Other professions

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 Ministerial Council for Consumer Affairs endorsed the review recommendations. It resolved to defer implementation of a recommended review of the Travel Compensation Fund pending completion of a joint industry working group review of the fund in light of the effects of the Ansett collapse. The remaining recommendations were:

- review the qualification requirements for travel agents and make these uniform throughout Australia
- increase to $50 000 the turnover threshold amount under which persons are exempt from the licensing requirement
- remove the exemption for Crown owned businesses.

The findings of the review and the working party response are outlined in more detail in chapter 19.

South Australia's Commissioner for Consumer Affairs implemented the agreed uniform qualification by minute dated 14 September 2004. (The commissioner was able to do this without legislative change because the qualification provisions of the Act state that the required qualifications are those prescribed by regulation or approved by the Commissioner.) South Australia approved the recommended increase in the exemption threshold level, and Regulations to implement this change came into operation on 1 June 2004. 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.

The Council thus assesses that South Australia has met its CPA obligations in relation to travel agents legislation.

Employment Agents Registration Act 1993

The review of this Act, completed in 2002, regarded no issues raised as high impact in terms of competition in this industry. Eleven issues were assessed as having a competition impact. The impact was assessed as trivial in nine cases and trivial to intermediate in the following two cases:

- Section 6 prohibits a person from carrying on business as an employment agent, or holding themselves out as an employment agent, unless licensed.
- Section 21 of the Act regulates an employment agent's conduct towards an employer seeking an employee, particularly in relation to how and when an agent can obtain payment from an employer.

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 require 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 2005.

Because reform is incomplete (in particular, licensing has been retained), 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, however, 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. South Australia has recently examined its regulatory arrangements. It found its entry requirement (completion of components of the National Hairdressing Training Package) to be less onerous than the qualification (apprenticeship completion) sought by the majority of hairdressing salons. Once hairdressers have entered the industry they are subject to a negative licensing scheme that has generated a relatively low number of complaints in recent years. South Australia thus considers that its remaining restrictions provide a net public benefit and are not in need of further change.

The Council accepts South Australia's position and assesses it as having met its CPA obligations in relation to hairdressers.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Motor Vehicles Act 1959

Workers Rehabilitation and Compensation Act 1986

Not assessed (see chapter 9).

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 its 2003 and 2004 NCP assessments, 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 cannot open after 9 pm on weekdays,

6 pm on Saturdays or 5 pm on Sundays. Although the government did not provide a public interest case to support these restrictions, it indicated that it intended to review the Act after it has been in operation for three years.

In its 2005 NCP annual report, South Australia maintained that the impact of the remaining restrictions is minimal. It considers that the legislation imposes a very low level of constraint for some types of retailer (such as furniture, hardware, floor covering and motor vehicle parts and accessories stores) and that other retailers can trade on all days of the year except Christmas Day and Good Friday.

South Australia also drew the Council's attention to the provisions of the Act that allow any retailer to seek exemption for specific periods. The minister approved widespread exemptions during the pre- and post-Christmas period from November 2004. However, since the amendments came into effect in 2003, few retailers have sought exemptions for other periods. South Australia considered that this suggests these are times when low volume sales do not justify opening for trade.

In addition, retailers located within close proximity (for example, in a tourist precinct) may seek exemption for their area. South Australia noted that only a few of the more prominent regions, such as Port Lincoln, have sought exemption, and considered that this also suggests extended periods of trading may not be profitable for many retailers.

South Australia concluded that its remaining restrictions have minimal impact. The Council accepts that the government's reforms mean the cost of the remaining restrictions is relatively small compared with the situation before July 2003. However, the CPA obliges jurisdictions to demonstrate that restrictions on competition provide a net public benefit and, where this cannot be established, to remove those restrictions. This obligation is not fulfilled by indicating that the restrictions have little impact. Indeed, if the restrictions have little impact, there is no reason to delay their removal.

Accordingly, the Council retains its 2004 NCP 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, a needs test (whereby the licensing authority can reject a licence application if it considers that existing sellers cater for the needs of the public in the relevant locality)

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.

A further review that considered the needs test published a draft report in April 2003. It described the needs test as a serious competition restriction that public benefits cannot justify and recommended its abolition. In 2004, the government advised that it was considering the report's recommendation—in particular, whether the needs test could be replaced by a public interest test as has occurred in some other jurisdictions. The government is continuing to hold discussions with stakeholders about this and other reform alternatives, but is yet to amend the Act. The Minister requested the Liquor and Gambling Commissioner to establish a working party to examine the various reform options, with a view to either a consensus recommendation or a clear agreement on the options to be considered. Representation on this working party has been finalised and it is expected to report around the end of December 2005

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 new retail petroleum licences to be withheld if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. The Petroleum Products Retail Outlets Board administers the licensing system. 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, principally the abolition of the board. It proposed phasing out the restrictions to provide industry participants with time to adjust their business plans to account for the changes. The legislation is now expected to be introduced in the second half of 2005.

The Council has accepted the need for a phased reform, but notes that South Australia, four years after the review, is still to pass legislation to effect the foreshadowed reforms. It thus retains its 2004 NCP assessment that South

Australia has not 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 their trade measurement Acts.

South Australia conducted an internal review of its Trade Measurement Administration Act which concluded that the Act does not contain any restrictions on competition because it merely provides for the administration of the Trade Measurement Act.

The Council thus assesses that South Australia has met its CPA clause 5 obligations in relation to the Trade Measurement Administration Act.

I2 Gambling

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 and 2004 NCP assessments, the Council assessed South Australia as not having met its CPA obligations in relation to lotteries legislation because the government's public benefit arguments do not support

indefinitely retaining effective exclusivity for the Lotteries Commission. (A summary of the review's findings and the Council's views can be found in chapter 9 of the 2003 NCP assessment.) South Australia continues to maintain its support for the review's findings, but has undertaken to monitor reviews of, and developments in, lottery licensing in other jurisdictions.

There have been no further developments, so the Council maintains its previous 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 should be introduced enabling transfer between venues of the right to operate gaming machines (without breaching the venue cap).

The Council has previously accepted the government's view that the State Supply Board's role as the single *supplier* of machines has public benefits. In its 2004 assessment, the Council noted, however, that South Australia had not addressed the review findings concerning (1) transferability of the right to operate machines and (2) the State Supply Board's monopoly on *service* provision, and thus assessed South Australia as not having complied with its CPA obligations in relation to gaming machines.

South Australia has now addressed these issues with the passage of the Gaming Machines (Miscellaneous) Amendment Act 2004 in December 2004. With respect to the gaming machine service licence, the Act removes the exclusive licence arrangement and provides for the Liquor and Gambling Commissioner to issue licences to applicants who meet appropriate probity and skills criteria. The latter provision is to commence operation once the existing service agent contracts held by the State Supply Board expire on 1 July 2006.

The 2004 Act also provides for trading in the right to operate gaming machines. The details of the trading scheme are established in the Gaming Machines Regulations 2005 and the first round of trading took place in May 2005.

Because South Australia has completed its reforms, the Council assesses it as having complied with its CPA obligations in relation to gaming machines.

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 to reflect the agreed national framework at the time of the 2003 NCP assessment, and the Council found that review and reform activity was incomplete. The minister responsible for the legislation is meeting with stakeholders in August 2005 and expects to decide on the future of the Act following this meeting.

The Council assesses South Australia as not having met its CPA clause 5 obligations because the state has not completed reforms.

Non-priority legislation

Table 15.1 provides details on non-priority legislation for which the Council considers that South Australia's review and reform activity does not comply with its CPA clause 5 obligations.

Table 15.1: Noncomplying review and reform of South Australia's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Citrus Industry Act 1991	Restricts market conduct.	NCP review completed in 2001. The review recommended repeal of the Act and that public benefit functions be undertaken by an industry association funded under the Primary Industries Funding Schemes Act 1998.	A draft Bill to provide for the removal of anticompetitive elements of the Citrus Act by 30th June 2005 was taken through a community consultation process in early 2004. The industry requested that total deregulation not occur immediately, and that some form of citrus industry legislation be retained. Subsequently a further round of drafting of new citrus industry legislation has been undertaken. The Citrus Industry Bill 2005 and Regulations provide for the removal of all marketing elements while retaining citrus industry development and food safety functions. Amendments to the Act have now been passed by Parliament and the accompanying regulations are expected to be proclaimed by the end of October 2005.
Consumer Credit (South Australia) Act 1995	Regulation of the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation which will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.

(continued)

Table 15.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Discharged Soldiers Settlement Act 1934	Restricts market conduct.	Review completed in 1999, recommending repeal of the legislation.	Cabinet approved the repeal of the Act on 20 January 2003. A repeal Bill is expected to be introduced to Parliament in September 2005.
Occupational Health Safety and Welfare Act 1986	Restricts market competition.	A legislative review was completed in 2002 and an NCP review was subsequently conducted. The NCP review found that the benefits of the existing system outweigh the costs of the restriction on competition and should be retained. The review raised concerns relating to market entry for health and safety representatives (given of accreditation processes) and in relation to public access to Australian Standards.	The proposed SafeWorkSA Authority will consider the issues raised by the review. If the authority is not established, the matters will be dealt with by the existing ministerial Occupational Health, Safety and Welfare Advisory Committee. The Occupational Health, Safety and Welfare (SafeWorkSA) Amendment Bill 2003 was before Parliament in autumn 2005, when the government expected it to be passed.
South Australian Health Commission Act 1976	Sets barrier to market entry and restricts market conduct of private hospitals.	Review completed in 1999. Final review report awaiting the outcome of the Health Complaints Bill introduced to Parliament in March 2001, then lapsed. The Health and Community Services Complaints Bill was introduced into Parliament in July 2002.	Amendments to the Act relating to non-NCP and NCP issues are being considered as part of the health reform process arising from the generational health review.

(continued)

Table 15.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustee Companies Act 1988	Regulates trustee companies.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

16 Tasmania

A5 Agricultural and veterinary chemicals[1]

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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The National Competition Council thus assesses Tasmania as not having met its Competition Policy Agreement (CPA) obligations in relation to this legislation.

---

1 The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

C1 Health professions

Pharmacy Act 1908
Pharmacists Registration Act 2001

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 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 constrain provisions to increase the number of pharmacies that both pharmacists and friendly societies can own from two to four. The Bill was subsequently tabled in Parliament on 19 October 2004. It also prohibits the entry of new friendly society pharmacies in Tasmania and, therefore, creates a new barrier to entry into the pharmacy market in Tasmania. The *Pharmacists Registration Amendment Act 2004* was passed by both houses of the Tasmanian Parliament during the November 2004 sitting and was proclaimed on 17 December 2004.

Given that the proposed reforms fall short of reforms recommended by COAG national processes, the Council assesses that Tasmania has failed to meet its CPA 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' Advisory Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of CoAG's endorsement.

Tasmania advised that the Department of Health and Human Services is drafting a new Poisons Act that reflects the outcome of the national review. The department will also develop Regulations to support the operation of the

new Act. The government plans to introduce the legislation as a package in 2006, following consultation with key stakeholders.

The Council acknowledges that the Galbally review has been subject to national processes. It also notes that competition reforms required in relation to the Poisons Act are relatively minor and that the new legislation will be subject to Tasmania's gatekeeping requirements. Nevertheless, because Tasmania has not yet fully implemented the review recommendations, it has not met its CPA obligations in this area.

D Legal services

Legal Profession Act 1993

The recommendations of 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.

The government accepted these recommendations and proposed to progress the reform through a number of pieces of separate legislation. Tasmania has since implemented the *Conveyancing Act 2004*, which removes conveyancing practice reservations.

The Tasmanian Government introduced the Legal Profession Amendment Bill 2004, but was unable to get it passed through the Legislative Council. Consequently, the government committed to adopting national reforms based on the national legal profession model laws. It expects to have a new Bill incorporating the national model laws ready for introduction to Parliament in late 2005 or early 2006 (see chapter 19). Adoption of the national model laws 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 creation of the Conveyancing Act, with further reforms pending. However, because Tasmania has not yet completed its review and reform process, it has not 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 review report on 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.

On 23 August 2005, the Property Agents and Land Transactions Bill 2005 was introduced into Parliament. This legislation will replace the Auctioneers and Real Estate Agents Act and implement the recommendations of the NCP review.

While the proposed reforms are consistent with the CPA guiding principle, the Council assesses that Tasmania has not met its CPA obligations in this area because it 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.

In 2004, Tasmania reported that it had implemented the majority of the review recommendations, but noted that further legislative change may be required in connection with national changes to travel agents' qualifications. Tasmania's 2005 NCP annual report advised that this issue has since been

addressed, as has the authorisation of travel agents licensed in a reciprocating jurisdiction to advertise and solicit business in Tasmania. The annual report noted that these actions complete Tasmania's involvement in the review. The Travel Agents Amendment Regulations 2005 and the Travel Agents (Exemption) Order 2005 contained the changes required for Tasmania to implement the outstanding recommendations of the national review. The Regulations and the Order were gazetted on 30 March 2005.

The Council assesses Tasmania as having met its CPA obligations in relation to travel agents legislation.

F1 Compulsory third party motor vehicle insurance

Motor Accidents (Liabilities and Compensation) Act 1973

Not assessed (see chapter 9).

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. Parliament passed the new legislation in November 2004, with the Racing Act being repealed at this time.

In its 2004 NCP assessment, the Council noted that Tasmania's new legislation retains restrictions that were relaxed or removed in other jurisdictions following independent NCP reviews. These restrictions include:

- 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).

The Council also expressed concern that the Tasmania has retained 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 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 assessed under Tasmania's gatekeeper provisions. The Council's assessment of this Act is provided below.

Tasmania met its CPA clause 5 obligations in relation to the Racing Act with the repeal of this Act. However, the Council assesses Tasmania as not having met its CPA obligations in relation to the remainder of its racing and betting legislation because the state has not provided a convincing public benefit justification for the restrictions contained in 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.

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.

The changes to the Gaming Control Act that extend the exclusive licence were passed by Tasmania's Parliament in October 2003. Two regulation impact statements assessing the proposed reforms found that the benefits of the measures outweighed the costs. Central to the findings of the regulation impact statements is the contention that the 1993 deed entered with Federal Hotels means that extending licence exclusivity is the only way to achieve the government's objective of limiting gaming machine numbers—that is, without

licence exclusivity, Tasmania faced the prospect of Federal Hotels installing another 1500 machines before its licence expires in 2008.

In its 2004 NCP assessment, the Council indicated that it could perceive potential benefits from the statewide cap (although the effectiveness of statewide caps in controlling problem gambling may be overstated where gaming machine accessibility is already relatively easy). The Council expressed reservations as to whether Federal Hotels, without licence exclusivity, would have expanded machine numbers to the extent claimed. The Council noted the 2001-02 and 2002-03 annual reports of the Tasmanian Gaming Commission, which show that 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. The Council also observed that if Federal Hotels faced the possibility of losing exclusivity in 2008, the expansion of machine numbers would be a strategy of doubtful merit, because it would result in the company owning a large number of near new gaming machines without a certain right to operate them in future.

There have been no developments in 2005, so the Council maintains its assessment that Tasmania has not complied with its CPA obligations in relation to this legislation.

J3 Building occupations

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.

The government accepted all of the review recommendations but had not introduced amending legislation at the time of the Council's 2004 NCP assessment. The Council concluded in that assessment that Tasmania had not met its CPA obligations because reform was incomplete.

The government foreshadowed that it would introduce legislation to Parliament in the autumn 2005 session to amend the Act to reduce reservation of practice, limit the qualifications and experience required for registration, implement a self-certification system, and amalgamate registration and plumbing inspection systems. In its 2005 annual NCP reporting, Tasmania advised that its proposed occupational licensing

legislation adopts the majority of the 1998 review's recommendations that were not adopted in the *Building Act 2000*. The proposed legislation is also consistent with legislation or proposed legislation of other jurisdictions (including Queensland, South Australia and the ACT) that have also prepared regulatory impact statements and made robust public benefit cases for the legislation. The Bill was introduced in Parliament on 25 May 2005 but is yet to pass through both houses. It is expected to be proclaimed in the spring 2005 Session.

Those review recommendations regarding competition restrictions that have not been adopted in the occupational licensing legislation and have not been justified as being in the public interest will be dealt with when the corresponding Regulations are completed.

The Council assesses Tasmania as not having met its CPA clause 5 obligations because the state has not completed the reform process.

Non-priority legislation

Table 16.1 provides details on non-priority legislation for which the Council considers that Tasmania's review and reform activity does not comply with its CPA clause 5 obligations.

Table 16.1: Noncomplying review and reform of Tasmania's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit (Tasmania) Act 1996	Regulates the provision of consumer credit.	National review completed. In March 2003, Cabinet agreed to drafting amendments to the Act to implement review findings. The amendments would remove doubt about the application of the Uniform Consumer Credit Code to conditional sale agreements, and prohibit the charging of valuation fees for household goods	The Consumer Credit (Tasmania) Bill 2003 received royal assent on 9 May 2003. The Consumer Credit (Tasmania) Act is template legislation based on the Uniform Consumer Credit Code, in accordance with the Uniform Credit Laws Agreement 1993. Implementation of the national review, completed in 2002, is being progressed at a national level by the Uniform Consumer Credit Code Ministerial Committee. As part of this process the government developed a package of amendments to align the state's Act with Australian Government changes. The amendments were proclaimed and gazetted on 20 July 2005.
Historic Cultural Heritage Act 1995	Places restrictions on building work on places of historic heritage significance that may affect historic cultural heritage.	Review, in conjunction with the review of the *Land Use Planning and Approvals Act 1993*, completed.	The government plans to introduce amending legislation to Parliament in the spring session 2005.
Hospitals Act 1918	Requires licensing, and certain qualifications to be held by hospital managers.	Review completed. The review recommended licensing private hospitals and day surgery facilities but not nursing homes.	The government considered a reform proposal in 2004. Amending legislation is expected to be introduced into Parliament in the spring session 2005.
Radiation Control Act 1977	Prohibits unlicensed dealings with radioactive materials and electronic products. Enables requirements to be imposed on premises and requires the registration of certain products and materials.	National review completed. The review recommended the continuation of a regulatory approach but with a move to outcome based (rather than prescriptive) controls over the possession or use of radiation sources.	The government has considered the outcomes of the review, and legislation is expected to be introduced to Parliament in the spring session 2005.

(continued)

Table 16.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Survey Co-ordination Act 1994	Prohibits the erection of a structure, building or any other erection that is likely to be mistaken for a standard permanent mark on a mountain, hill or elevated land without the approval of the Surveyor-General.		The minor restrictive provision will be repealed in the legislation repeal Bill expected to go before Parliament in the spring session 2005
Trustee Companies Act 1953	Provides for the establishment of trustee companies. Prohibits specific actions in relation to loans. Prohibits trustee companies from engaging in any business unless expressly authorised in the Act.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.

17 The ACT

A8 Veterinary services[1]

Veterinary Surgeons Registration Act 1965

The ACT's Veterinary Surgeons Registration Act restricts competition by licensing practitioners, reserving title and reserving certain practices. The Act was reviewed in 2001, together with the territory's health professional legislation. This review recommended retaining registration, the reservation of title and clear conduct standards, while removing the general reservation of practice and prohibitions on advertising. The ACT Government resolved to bring veterinary practice regulation within the scope of the *Health Professionals Act 2004*. Accordingly, on 23 June 2005, the ACT Parliament passed the *Health Legislation Amendment Act 2005*, which amended the definition of a health service within the Act to include health services provided to animals. The part of the Amendment Act repealing the Veterinary Surgeons Registration Act will commence when a specific veterinary surgeons Regulation comes into force under the Health Professionals Act. This is expected to occur within 12 months. 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 retains its 2004 assessment that the ACT has not 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 quantities for taxi and hire car licences.[2] The number of taxi plates has increased only marginally since 1995, and plate

---

1 The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

2 The *Motor Traffic Act 1936* was repealed in 2000.

values remain high (over $200 000). Reviews by the Freehills Regulatory Group in 2000 and the Independent Competition and Regulatory Commission in 2002 recommended de-restricting entry to the taxi and hire car industry.

The government announced reforms for the taxi and hire car industry in late 2002. Under these reforms, an additional 5 per cent of taxi licences would be issued each year, subject to a reserve price 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. 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.

The Road Transport (Public Passenger Services) Amendment Bill was introduced to the Legislative Assembly in June 2003 to provide for the reforms. The Assembly, however, referred the legislation to a standing committee, which in late 2003 recommended a government buy-back of hire car plates and an off-budget buy back of taxi plates. The committee recommended that the government, after the buy-backs, should issue new taxi and hire car plates based on growth in passenger trips, population and gross territory product.

The government responded to the committee's report in 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 taxi population) in accordance with the formulae described above. There would not be a buy-back of taxi plates, but the government would offer to buy back hire car licences and lease an unlimited number of these licences.

In August 2004, the Legislative Assembly debated the Road Transport (Public Passenger Services) Amendment Bill and the government's response to the committee's report. The Assembly passed amendments to allow unlimited entry into the hire car market. This will improve chauffeured car services to consumers, especially given hire cars can rank at the Canberra airport and casino. In addition, there is no legislated minimum hire time limit or regulated fare for hire cars. The Assembly did not support the government's plan to release 10 taxi plates.

In its 2005 NCP annual report, the ACT Government stated that it is considering options for the reform of taxi licence restrictions. It noted that 'the new arrangements for the hire car sector will provide a higher level of competition with the taxi industry, particularly through lower fares' (Government of the ACT 2005, p.10). While the changes to hire car regulation are consistent with the direction of the two independent NCP reviews, the ACT has made no progress in reforming the taxi market. The government is now considering the reform models adopted by Western Australia and Tasmania, particularly the leasing of licences.

The Council confirms its 2004 NCP assessment that the ACT has not met its CPA clause 5 obligations in this area.

C1 Health professions

Dental Technicians and Dental Prosthetists Registration Act 1988

In the 2004 NCP assessment, the Council assessed that the ACT had met its CPA obligations in relation to general health practitioner legislation covering dentists, chiropractors and osteopaths, medical practitioners, nurses, optometrists, physiotherapists, psychologists and podiatrists. However, the general review of the ACT's health practitioner legislation 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.

Given dental technicians work to the order of registered dentists or dental prosthetists, the review considered 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 be appropriately managed through infection control and occupational health and safety legislation (Government of the ACT 1999, p. 36).

The resultant omnibus reforms did not remove registration provisions for dental technicians. 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 the ACT's advice that the Health Professionals Bill would fully implement the recommendations of the NCP review (Government of the ACT 2003, pp. 2–3), but the ACT stated in its 2004 NCP annual reporting that the Act would continue to register dental technicians (Government of the ACT 2004a, p. 5).

The Council considers that 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 arguments to support the registration of dental technicians. The Council, however, did not find the arguments compelling and noted that they should have been considered in the context of the territory's health practitioner review process. It also noted 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.

In its 2004 assessment, therefore, the Council determined that the ACT had not met its CPA obligations in relation to the Dental Technicians and Dental Prosthetists Registration Act. In its 2005 NCP annual report, the ACT stated that it does not propose to make any legislative changes to the Act. Accordingly the Council confirms its assessment that the ACT has not met its CPA obligations. However, the Council notes that the specific impacts on competition may depend on the particular regulations promulgated.

Pharmacy Act 1931

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 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 those in New South Wales and Victoria, tailored to its circumstances, it would not attract a competition payment penalty. In particular, the Prime Minister advised the Chief Minister of the ACT:

> *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, the Hon J 2004, pers. comm., 16 July)

On 5 August 2004, the 2004 Bill was discharged from the Legislative Assembly, as a result of the Prime Minister's advice.

The territory has since passed the *Pharmacy Amendment Act 2004*, which precludes a registered pharmacist from carrying on a business as owner on, inside or partly inside the premises of a supermarket. While the Council acknowledges that the amendment was introduced by a private member, it notes that the outcomes of the COAG national processes do not support this prohibitions and that the ACT has not provided the Council with a robust public interest case for this restriction.

The ACT has engaged The Allens Consulting Group to study community pharmacy services in the ACT with a particular focus on access to pharmacy services after hours. The terms of reference for the study were developed through consultation with the Pharmacy Guild and the ACT Pharmacy Board. The ACT Government advised that it expected to consider the consultant's report in August 2005. This would provide a more detailed basis for the government to respond to the Council's assessment.

Given that the ACT has not passed pharmacy reforms to remove restrictions on the operation of friendly societies, the Council assesses that the ACT has not met its review and reform obligations in relation to pharmacies.

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' Advisory Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of COAG's endorsement.

The Council acknowledges that the Galbally review has been subject to national processes. However, because the ACT has not fully implemented the review recommendations, the Council assesses that it has not 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 by passing the *Civil Law (Sale of Residential Property) Act 2003*. This Act allows agents to complete some of conveyancing 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 national model laws for the legal profession. Some elements of the ACT package depend on Commonwealth regulations (which, while agreed by the Australian Government, have not yet been implemented).

While national model laws do not stem from NCP requirements, the Council accepts that the ACT has 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. It also notes that the ACT Parliamentary Counsel's Office is drafting national model laws following the outcome of the COAG process. However, because the ACT has not yet completed the reforms, the Council assesses that it has not met 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.)

The ACT is developing legislative amendments to the Agents Act to give effect to outstanding recommendations from the national review agreed by the Ministerial Council on Consumer Affairs. It anticipates that the amended legislation will come into effect late in 2006.

The Council assesses the ACT as not meeting 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. The new Act removes restrictions on place of work, which agents cited as a significant restriction on their capacity to operate in the ACT. The ACT reported that 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. The RIS found that the costs imposed on 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 despite repeated requests from the Council for the ACT to demonstrate, rather than assert, the public interest in retaining licensing. The (public) review's finding that licensing does not produce significant public benefits casts doubt on the robustness of the ACT's (confidential) public interest case for retaining the licensing. Moreover, there is an absence of review support for licensing in other jurisdictions.

The ACT's position, however, remains unchanged: it will not reconsider the licensing requirement because it contends that the requirement incurs minimal costs to the industry and does not attract negative comments from relevant participants. This matter might have readily been resolved had the ACT provided the RIS to the Council (on a confidential basis if necessary), thereby allowing the Council to determine whether the conclusion reached is within a reasonable range of outcomes based on evidence before the review process.

The Council accepts that the licensing requirement does not impose significant costs on industry participants. Nevertheless, it maintains its previous assessment that the ACT has not met its CPA obligations in this area.

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 does 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. Consultations have commenced with the ACT public service agencies and UnionsACT. A decision is expected in 2005-06.

The Council thus retains its 2004 NCP assessment that the ACT has not 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).

Because the national review and reform of trade measurement legislation have not been completed, the ACT has not met its CPA obligations in relation to trade measurement legislation.

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. The ACT has previously 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 became known. At the core of the task force's findings is a recommendation, endorsed in principle by the Australian Racing Ministers' forum, that a product fee based on bookmaker turnover be levied on all corporate bookmakers, excluding the TABs. While peak national racing bodies have initiated negotiations with corporate bookmakers and moved to secure the intellectual property rights in the racing product, the implementation of the recommendation appears to have stalled.

This recommendation occurred against a background of significant changes within the gambling sector, including:

- the operation in Australian racing of unlicensed foreign betting exchanges

- the takeover of the New South Wales based totalisator TAB Limited by the Victorian based gambling entity TABCORP Holdings Ltd. A key aspect of the takeover is the merging of the New South Wales and Victorian totalisator pools, including the SuperTAB partners of TABCORP, the ACT, Tasmania and Western Australia.

- changes to the televising of racing product images, with the monopoly held by Sky Channel (previously owned by TAB Ltd) now challenged by racing industry owned TVN.

In view of these significant changes to totalisator operations, the ACT Government advised the Council that the appropriate time to consider the issue of non-exclusive TAB licensing arrangements is when the results of merging pools is known with some certainty.

The ACT met its CPA obligations in relation to the Betting (Corporatisation) (Consequential Provisions) Act by repealing it in 2001. However, because the ACT has not completed its reform of the Betting (ACTTAB Limited) Act, 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 further review. The latter 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)
- that the new legislation provide for the introduction of 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 1999, 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 1999, p. 15.1). The Council considers that the ACT's arrangements do not have any harm minimisation benefits because access to gaming machines is already widespread (with the ACT having the highest number of gaming machines per head in Australia) 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, and the review did not recommend objectives. The ACT Government considers that a primary objective of its arrangements is to ensure the benefits from the operation of gaming machines accrue to the community. (However, it did not include this, or any other, objective in its amendments to the Act). The CPA places the onus of proof on governments to demonstrate that restricting competition is the only way of achieving their objectives. The ACT Government has asserted that its objective could not be achieved other than by restricting the issue of gaming machine licences to licensed clubs, but it has not provided analysis to support its position.

The Council thus retains its 2004 NCP assessment that the ACT has not complied with its CPA obligations in relation to gaming machines.

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. Licences are thus granted 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. In 2004 the Council noted, given that the results of the Australian Government's review and response to the review's findings were known, that it would be appropriate for the ACT to complete its review in a timely manner.

In its 2005 NCP report, the ACT Government advised the Council that the resumption of its review of the 1998 Act has been delayed due to higher

priority legislative reviews but that this is of little consequence because the ACT does not have any licence applications under consideration.

Because the ACT has not completed its review, the Council assesses it as not having met its CPA obligations in this area. The Council accepts, however, that the delay in completing the review does not impose significant costs on the community.

Non-priority legislation

Table 17.1 provides details on non-priority legislation for which the Council considers that the ACT's review and reform activity does not comply with its CPA clause 5 obligations.

Table 17.1: Noncomplying review and reform of the ACT's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Consumer Credit Act 1995	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the Uniform Consumer Credit Code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation which will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005. The Consumer Credit Code set out in the *Consumer Credit Act 1994* (Qld), appendix applies as a territory law under the *Consumer Credit Act 1995*, s 4 (a) and will give effect to the reform requirements identified by the NCP review.
Public Health (Prohibited Drugs) Act 1957	Limits business conduct.	Review completed—part of the Galbally national review. The final Galbally report was given to the Australian Health Ministers' Conference (AHMC) in early 2001.	The Australian Health Ministers' Advisory Council (AHMAC) established a working party to develop a draft response for COAG consideration. The working party's draft response, which has been endorsed by AHMAC, was considered by the Primary Industries Ministerial Council before being forwarded to COAG. The response was endorsed by the AHMC out of session in October 2003 and was expected to be considered, together with the Galbally report, by COAG in 2004. The ACT is awaiting COAG's final response before commencing legislative changes.

(continued)

Table 17.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Radiation Act 1983		National review completed.	At its 29 July 2004 meeting, the AHMC endorsed edition 1.0 of the National Directory for Radiation Protection (NDRP) as the uniform national framework for radiation protection in Australia. It agreed that the regulatory elements of the NDRP would be adopted in each jurisdiction as soon as possible on consideration and approval of the provisions of the NDRP, using existing Commonwealth/state/territory regulatory frameworks. Accordingly, the ACT is commencing amendments to its Radiation Act to achieve reforms identified in the NCP Review of Radiation Protection Legislation completed in May 2001. The amended legislation is expected to be finalised in 2006.

(continued)

Table 17.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trans-Tasman Mutual Recognition Act 1997		A national review was completed in 1998. The Productivity Commission completed a research study of the Trans-Tasman Mutual Recognition Agreement (TTMRA) that was released in October 2003. The key finding was that the TTMRA has been effective overall in achieving the objective of assisting the integration of the Australian and New Zealand economies and promoting competitiveness. A number of special exemptions from the TTMRA relate primarily to public safety. They are: therapeutic goods, hazardous substances, industrial chemicals and dangerous goods, consumer product safety standards, road vehicle standards, gas appliances standards, electromagnetic compatibility and radiocommunications standards. The Commission recommended that many of the exemptions should remain, because mutual recognition would erode justified regulatory differences.	In May 2004, COAG endorsed out of session the Committee for Regulatory Reform interim report on the findings of the Productivity Commission's Review of Mutual Recognition Schemes. In accordance with the recommendation, a Cross-Jurisdictional Review Forum was established to carry out further consultations and prepare a final report to COAG and the New Zealand government on the Commission's findings. The ACT has endorsed the forum's report, which is to be forwarded to COAG and the NZ government for their consideration. The ACT's legislation mirrors the Australian Government's: accordingly, any legislative amendments resulting from the review's recommendations will be determined by changes occurring at the Commonwealth level.

18 Northern Territory

A3 Fisheries[1]

Fisheries Act

The *Fisheries Act* restricts entry through licensing, permits and season closures; restricts vessels and gear used; and restricts catch through total allowable catches, minimum sizes and bag limits.

ACIL Consulting (now ACIL Tasman) completed a National Competition Policy (NCP) review of the Act for the Northern Territory Government in October 2000. The review recommended, amongst other things:

- adding a clear statement of objectives to the Act
- exploring the potential for replacing input controls with individual transferable quotas in all Northern Territory fisheries, beginning with spanish mackerel and crab fisheries
- removing various restrictions around licensing, including number, eligibility, allocation, foreign ownership, transferability and renewal
- beginning a process of increasing the recovery of fishery management costs from fishers
- considering the adequacy of resources devoted to enforcing fishery controls.

In May 2004 the Northern Territory Parliament passed the Fisheries Amendment Bill, which:

- 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 open and competitive allocation of any new licences
- removed the prohibition on foreign ownership of licences.

---

[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

Some recommendations for reform are being implemented via the review of related regulations. For instance, the potential for introducing individual transferable quotas is being explored via the review of fishery management plans. In January 2005 the government introduced a new management plan for the spanish mackerel fishery. This retains input controls as the prior review found that individual transferable quotas would impose high management and enforcement costs to control risks such as high-grading and under-reporting. More recently the review of the mud crab fishery management plan has concluded on similar terms. Management and enforcement costs are a key factor given that these are relatively small fisheries[2].

Restrictions on the transfer of licences have been retained only where necessary to ensure sustainability of the fishery. All but two licences in the Timor Reef fishery are fully transferable – the two restricted licences are the last subject to a two-for-one reduction process intended to reduce fishing effort. Controls on the transfer of licences in the aquarium/display fishery are being retained until an accurate assessment of sustainable harvest levels can be made.

The government is also:

- committed to recovering fishery management costs from licence holders, recently increasing some fees, and introducing a fee for fishing tour operators from July 2006

- 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 National Competition 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 and 2004, the Council urged the 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 government initially declined to resubmit the pearl oyster hatchery quota to NCP review. It has since advised that the future of pearl hatchery quota is being reconsidered in consultation with the Western Australian Government and industry.

---

2 Licences in both the spanish mackerel and mud crab fisheries are fully transferable.

The Council assesses that the Northern Territory has made very 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 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). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

The Council thus assesses that the Northern Territory has not met its CPA obligations in relation to this legislation.

B1 Taxis and hire cars

Commercial Passenger (Road) Transport Act

The Commercial Passenger (Road) Transport Act allows the Northern Territory 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 assessed that the Northern Territory had complied with its NCP obligations.

In late 2001 the government imposed a temporary cap on the number of taxi, hire car and minibus licences. In May 2003, it announced that the number of taxi licences would be capped permanently in Darwin and Alice Springs to

accommodate industry concerns. The caps fix the taxi-to-population ratio at 1:900. The Council's 2003 NCP assessment reversed the 2001 compliance recommendation, finding that the re-introduction of restrictive caps without a robust public interest case was inconsistent with CPA clause 5 obligations.

In September 2003, the government allowed minibuses to respond to hails and to rank at bus stops in addition to minibus ranks 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, albeit that the overall numbers of taxis and commercial passenger vehicles have fallen since the cap was introduced. The number of taxis in Darwin increased from 88 in 1998 (before reform commenced) to 135 in 2000, before falling to 113 in March 2004.

The following are salient features of the current regulatory arrangements:

- Minibuses can respond to street hails, rank, accept bookings and carry dispatch units. They pay the same licence fee as paid by taxis, and their numbers are not constrained by regulation. Minibuses are unmetered and operate under a zonal fare arrangement. However, they are imperfect substitutes for taxis: quality differences and the greater point-to-point flexibility of taxis mean that the two transport modes remain segmented.

- Taxi licences are not traded but are issued by the government for an annual licence fee. Licence fees are thus set by regulation rather than any scarcity rent attached to the licence. (Licence fees are currently $16 000 per year, to fund the earlier compensation package.)

- Recent calls for more licences in Alice Springs were met through an additional release of plates, which dropped the ratio below 1:900, indicating flexibility in the regulations.

- Numbers of private hire vehicles and limousines are not restricted, but these vehicles are generally barred from ranks and street hails.

In its 2004 NCP assessment the Council outlined that it had ascribed a relatively low benchmark for compliance with the review and reform of taxi and hire car regulation. It also identified the need for a comprehensive review of taxi regulation in Australia—a view echoed by the Productivity Commission (see PC 2005a). The recent experience of taxi regulation in the Northern Territory could form a useful case study for such an inquiry.

It remains the case that the Northern Territory re-introduced restrictions on competition without providing a robust public interest case. The industry is still paying for a compensation package that was not carried to fruition because the government reacted to industry concerns. The industry would likely have settled at an appropriate equilibrium level had the program not been terminated: It is not uncommon in situations where regulation has eliminated market signals for liberalisation to result in a short term 'overshooting' supply response. This was observed, for example, with the de-

restriction of hire cars in South Australia, where new entry boomed initially but numbers later diminished to a sustainable level.

The Council recognises that the liberalisation of minibuses and hire cars somewhat mitigates the restrictions on taxi licence numbers. Moreover, if the government reduces licence fees administrative cost once the cost of the compensation package has been recouped, there would be significant scope for the reduced taxi operating costs to be shared with consumers. The government acknowledged this point in its 2004 NCP annual report:

> *The Northern Territory bought back the privately owned taxi licences on issue at the end of 1998. Had this not occurred, taxi licence values would now cost approximately $30 000 per annum in Darwin, $5000 more than they did in 1999 and $15 000 per annum more than the current taxi licence fees. The reduction in lease/licensing costs represent savings of up to 10 per cent of the current cost of operating a taxi and, if the buyback had not occurred, would almost certainly have led to pressure for increased taxi tariffs.* (Government of the Northern Territory 2004, appendix A, p. 1)

At present, the availability of 'chauffeured passenger vehicle' options in the Northern Territory could be considered very favourably compared with the availability in some other jurisdictions. Nevertheless, the Council confirms its 2003 NCP assessment that the Northern Territory has not met its CPA obligations in relation to taxi regulation because it reversed its compliant reform program without demonstrating that this was in the public interest.

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 to make entry requirements more flexible and clarify 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 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. The *Health Practitioners Act 2004* passed in April 2004 broadly incorporates the review recommendations.

On 8 October 2004, the Council Secretariat met with the Northern Territory's Department of the Chief Minister, the Northern Territory Treasury and other government representatives. At this meeting, the Council secretariat sought clarification on whether, under the legislation, professional boards may introduce new anticompetitive requirements through codes (including, for example, practice restrictions). The Council received advice that the ability of boards to introduce new restrictions is 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. In its 2005 NCP annual report, the Northern Territory advised that the professional boards are conducting an annual review of the codes.

Given this advice, the Council confirms that the Northern Territory has met its CPA obligations in relation to these professions, except for occupational therapists. However, the Council notes that this assessment is based on the Northern Territory's ongoing compliance with CPA clause 5(5) requirements.

For occupational therapists, the 2000 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.

New South Wales, Victoria, Tasmania and the ACT do not reserve title for occupational therapists. They instead rely on self-regulation supplemented by general mechanisms such as common law, the *Trade Practices Act 1974* and independent health complaints bodies, and patients in these jurisdictions do not appear to be at an increased risk of harm. This indicates that title reservation for occupational therapists does not provide significant benefits to consumers. For this reason, the Council considers that the Northern Territory has failed to meet its CPA obligations in relation to occupational therapists. The Council notes, however, that the retention of title protection does not have a material impact.

Pharmacy Act 1996

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 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 never contained restrictions on how many pharmacies a pharmacist can own. It also did not rule out the ownership of pharmacies by persons other than pharmacists (Wilkinson 2000). In the context of the 2003 NCP assessment, however, 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.

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 in which 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. Given the comprehensiveness of the Wilkinson review and the subsequent COAG working group consideration of ownership restrictions, the Council considered 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.

Consistent with this advice, the Northern Territory has reviewed the pharmacy ownership provisions in accord with terms of reference that incorporate the comments of the Council. However, following a letter from the Prime Minister stating that no penalty would attach to the introduction of new restrictions on competition, the Northern Territory Government has advised that it will not publish its independent review report.

Schedule 8 of the Health Practitioners Act commenced operation on 23 February 2005. On the evidence to date, the Northern Territory's actions

will serve the interests of a vested group rather than the community, which is inconsistent with COAG outcomes. Consequently, the Council considers that the Northern Territory has failed to meet its CPA obligations in relation to the pharmacy profession.

C2 Drugs, poisons and controlled substances

Poisons and Dangerous Drugs Act
Therapeutic Goods and Cosmetics Act
Pharmacy Act 1996

Following the outcome of the Galbally review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of COAG's endorsement.

The Northern Territory Department of Health and Community Services has commenced a review of the Poisons and Dangerous Drugs Act. The review will:

- determine the best way to accommodate the recommendations of the Galbally review
- consider the merits of adopting the Commonwealth *Therapeutic Goods Act 1989* to replace the Therapeutic Goods and Cosmetics Act
- address outstanding issues from the former Pharmacy Act that are not included in Schedule 8 of the Health Practitioners Act.

The department advised that it intends to release a discussion paper in late 2005 and that the government expects to implement reforms arising from the review towards the end of 2006.

The Council acknowledges that Northern Territory is progressing with the Galbally reforms. However, because the reforms are still outstanding, the Council assesses that the Northern Territory has not 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). It is concurrently drafting legislation to implement the model laws and the recommendations from the review of the Legal Practitioners Act. The Northern Territory will also consider its legal professional indemnity regime in the context of the national model law process. It advised that it expects to introduce legislation to Parliament in mid 2006.

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 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 working party did not accept the review recommendations. More detail is provided in chapter 19.

The Northern Territory advised that its legislation does not require compulsory membership of the travel compensation fund. However, the government formed an advisory committee which released an issues paper early in 2004 and will address whether the government needs to establish a territory-specific alternative to the travel compensation fund. Any competition restrictions introduced as a result of new legislation will be subject to the Northern Territory's competition impact analysis process. The territory also advised that there are no other national review recommendations that are yet to be implemented in the territory.

The Council assesses the Northern Territory as having met its CPA clause 5 obligations in relation to travel agents legislation.

F1 Compulsory third party motor vehicle insurance

Territory Insurance Office Act
Motor Accidents (Compensation) Act

Not assessed (see chapter 9).

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 taverns and clubs may trade 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 removed 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 Act's objectives, preferring alternative (but consistent) wording.

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. In considering the finding of the NCP review of the Liquor Act, the government rejected this recommendation because a major additional review of alcohol related issues, (the Alcohol Framework project), was not finalised and thus abolition of the restriction at that time was perceived as premature at that time.

The Alcohol Framework report was published in July 2004. It recommended deferring the extension of Sunday trading to liquor stores for 12 months following implementation of the Alcohol Framework, to assess whether the framework's proposals (particularly on the sale of cheap high alcohol products) had been effective. It further recommended removing the prohibition on Sunday trading by liquor stores if there was a significant

decline in alcohol sales and/or other evidence that Sunday trading by particular stores would not exacerbate alcohol related harm

In August 2004, the government reaffirmed its decision to retain the Sunday trading restriction. For the 2004 NCP assessment, the territory provided a public benefit case supporting the restriction on packaged liquor sales. The Council, however, found that the territory had not provided a credible justification for restricting packaged liquor sales in a manner that discriminates between types of liquor outlet. The Council recommended that the public interest assessment should also have considered a range of alternative approaches, including:

- banning all packaged liquor sales on Sundays, regardless of outlet type
- instituting bans on particular beverages considered to cause harm
- instituting a roster system that retains the current number of sellers on Sundays but allows all incumbents the opportunity to trade
- allowing all liquor outlets to trade on Sundays but for a more restricted period than the current 12 hours.

Alternatively, the Council requested the Northern Territory Government to develop additional policy options that promote harm minimisation objectives in a nondiscriminatory manner, or to provide an analysis demonstrating why the suggested options are inconsistent with public benefit objectives. In response, the government advised that it would further consider alternative approaches to the control of packaged liquor sales when implementing the Alcohol Framework related reforms during 2005. This reform work, which includes a complete overhaul of the Liquor Act, is underway and is not expected to be finalised for 12 months. Consequently, the restriction on Sunday packaged liquor sales remains in place.

In correspondence to the Council, the territory confirmed that a needs test would not be re-introduced because the principle of the public interest is enshrined in the objects of the Liquor Act and in specific provisions of the Act. It also confirmed that the overhaul of the Act will involve a competition impact analysis (including a cost-benefit assessment of alternative options to address harm minimisation) and that any legislative change will be subject to gate keeping requirements.

In its 2004 NCP assessment, the Council noted that the territory had demonstrated substantial review and reform progress, particularly by removing the needs test, which was the major restriction in its legislation. Also, the Council is encouraged by the territory's undertaking to reexamine its other restrictions, in part, because the territory has robust gate keeping arrangements. However, the Northern Territory is continuing to discriminate between sellers in relation to Sunday trading hours, without providing a convincing public interest case.

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 have not been completed, the Northern Territory is yet to meet its CPA obligations for trade measurement legislation.

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 from 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 served best by not attempting to institute the reforms in isolation and with limited public consultation, so decided to undertake the reforms as part of a broad early childhood strategy. Subsequently, in its 2005 NCP annual report, the government advised that the Care and Protection of Children and Young People Bill is being developed as a result of the NCP review of the

Community Welfare Act. The Bill is subject to a competition impact analysis and will be introduced to the Legislative Assembly in the second half of 2005.

The Council thus assesses the Northern Territory as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

I3 Gambling

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.[3] The former Act gave the minister the authority to sell 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 its 2004 NCP assessment, the Council assessed the Northern Territory as having met its CPA obligations in relation to the Sale of NT TAB 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 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 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 an agency network business would continue to service the market without exclusivity. Given these doubts, the review found it probable that exclusivity would deliver a net benefit.

---

3 These Acts repealed and replaced the *Totalisator Administration and Betting Act*.

In its 2004 NCP assessment, the Council expressed reservations about both arguments. The Council considered that the way in which to test whether the market can support only a single seller would be to remove exclusivity and that there are ways other than totalisator exclusivity (for example, subsidies for the provision of remote facilities) to ensure the availability of totalisator facilities. The Council assessed the Northern Territory as not having complied with its CPA obligations in relation to the totalisator legislation.

The Northern Territory's 2005 annual NCP report to the Council again emphasised its view that exclusivity was necessary to ensure that a network of physical outlets across the territory was upgraded and maintained and that the territory market was adequately serviced given its relatively small size.

In addition, the report raises the issue of compensation to UNiTAB in the event of a buy back of the exclusive licence. The report notes the review's estimate that the total purchase price paid by UNiTAB was approximately $60 million in net present value terms. Whilst maintaining the assertion that the territory market is sufficiently served by a single operator, the government considers that to buy back the exclusive license would leave it liable to UNiTAB for compensation, with the cost likely to exceed any public benefit from removing exclusivity.

The Northern Territory is therefore in a similar position to Victoria, Queensland, New South Wales and South Australia, each of which has provided an exclusive licence to their privatised totalisator operators. In previous assessments, the Council has assessed these jurisdictions as being in compliance with their CPA obligations on the basis that the cost of removing exclusivity is likely to be greater than any resultant public benefit.

The Council thus assesses that the Northern Territory has met its CPA obligations for totalisator legislation.

Non-priority legislation

Table 18.1 provides details on non-priority legislation for which the Council considers that the Northern Territory's review and reform activity does not comply with its CPA clause 5 obligations.

Table 18.1: Noncomplying review and reform of the Northern Territory's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Companies (Trustees and Personal Representatives) Act	Regulates trustee companies.	The matter is to go to the Standing Committee of Attorneys General (SCAG) to develop a national solution.	
Consumer Credit (Northern Territory) Act	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the consumer credit code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's 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 some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation which will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.
Public Health (Shops, Eating-Houses, Boarding Houses, Hotels and Hostels) Regulations	Provides for the registration of a boarding house (ss35, 36), and the registration of an eating house (ss12, 13).	Targeted review: refer to the Public Health Act.	On commencement of the Food Act 2004, part III of these Regulations was repealed. The remainder of the Regulations will be reviewed in conjunction with the finalisation of the Public and Environmental Health Bill.
Public Health Act	Includes registration of barbers' shops (s5), registration of a boarding house (ss 35, 36), registration of an eating house (ss12, 13), general sanitation, noxious trades, medical and dental inspection of school children and cytology register, among other things.	Review completed in May 2000. The review recommends that no attempt be made to amend the current legislation but rather completely new legislation be drafted. A general structure for public health legislation has been circulated by the Government in an issues paper. This proposed structure reduces inconsistency and favours outcome rather than input standards.	The Public and Environmental Health Bill is expected to repeal the Public Health Act.

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, reflecting protracted interjurisdictional consultation in many cases, and complexity of the issues sometimes. In some cases, such as the reviews of agricultural and veterinary chemicals and drugs and poisons, jurisdictions' interests are represented by more than one portfolio (for example, primary industries and health) adding to the time taken for agreement on approaches to regulation. Further, some reviews involve a consideration of issues that will evolve over time—the National Competition Council recognises, for example, that there are several 'layers' to radiation protection measures, and that review and reform activity in this area may never be complete.

At the same time, the conclusion of some national review processes has been protracted by the slowness of one or two jurisdictions in signing off on reforms to which all other parties have agreed, or in implementing agreed legislative changes, or by apparently minor issues receiving extended attention at the expense of progressing the reform package as a whole. The Council encourages governments to address these areas so outstanding national reviews can be completed to the benefit of the whole community.

The 2004 NCP assessment indicated that work was still to be done in most of the reviews found to be incomplete by the 2003 NCP assessment. The following sections summarise the status of the review and reform activity for each of the national reviews, and indicate a good deal of unfinished work.

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, 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 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, 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. State and territory legislation automatically mirrored the amendments.

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. State and territory mirror legislation would automatically reflect these amendments. However, the public consultation process gave rise to several issues with the cost recovery model, which were addressed through further consultation and refining of the amending legislation. The government issued a draft cost recovery impact statement in November 2004, and subsequent comments from stakeholders did not result in any significant changes to the cost recovery model described in the statement.

The Agricultural and Veterinary Chemicals Legislation Amendment (Levy and Fees) Bill 2005 was given royal assent on 1 April 2005. The new application fees will come into effect from 1 July 2005. Because levy payments are payable six months after the year to which they apply, it will take up to 31 December 2006 for all of the changes to flow through to payments by all registrants. The Australian Government had indicated its intention to introduce the Agricultural and Veterinary Chemicals Legislation Amendment Bill (No. 2) in the autumn 2005 session to implement a revised cost recovery structure for the Australian Pesticides and Veterinary Medicines Authority, incorporating a modular fee structure. However, this legislation had not been introduced at the time of this assessment.

In December 2003, the Australian Government endorsed the revised framework for the Australian Pesticides and Veterinary Medicines Authority's use of alternative suppliers of assessment services. The framework includes provisions for the contestability of some work, subject to certain conditions.

The working group examining the 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 for enforcing

compliance with the required quality of active constituents. The Australian Pesticides and Veterinary Medicines Authority released for public comment, a regulatory impact statement in December 2003 on quality assurance of active constituents and agricultural chemical products. 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—the Agricultural and Veterinary Chemicals Legislation Amendment Bill (No.1)—for introduction in the autumn 2005 session of Parliament The Bill is intended to implement a regime of data protection for agvet chemicals, which will cover new chemicals, extensions to the use of existing chemicals, and chemicals subject to review. However, this Bill had not been introduced at the time of this assessment.

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 finalising the national code has meant that reform of mirror state and territory legislation 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, together with an investigation of different methods of application. However, the Council understands that there are no arrangements in place to finalise this work.

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 Council of Australian Governments (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 latter agreement's requirement that it 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 the Trans-Tasman Mutual Recognition Arrangement in enhancing trade, workforce mobility and international competitiveness; whether any changes are required to improve the

agreements' operation; and whether the scope of the agreements 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 retaining the special exemptions in areas such as therapeutic goods, hazardous substances, industrial chemicals, dangerous goods and consumer product safety standards, because the regulatory differences are justified. COAG's Committee on Regulatory Reform completed a report on the review for COAG and the New Zealand Government, and COAG approved it out of session in May 2004. A subsequent report by the Cross Jurisdictional Review Forum was submitted to the COAG Secretariat in February 2005 and is currently being dealt with out of session.

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 was completed and the resultant legislation, the Offshore Petroleum Bill 2005, was passed by the House of Representatives on 18 August 2005. Amendments and rewrites of the counterpart state and Northern Territory legislation will follow the

introduction of this 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 commenced operation on 1 January 2005 and regulates safety in the Australian marine jurisdiction and also in state and territory coastal waters. Each state and the Northern Territory has made, or will shortly make, corresponding amendments to its legislation, so as to confer equivalent functions on the authority in relation to petroleum activities in state and NT coastal waters.

Review of legislation regulating drugs, poisons and controlled substances legislation

The Australian, state and territory 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 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. Jurisdictions' endorsement of the review and the response was completed in July 2005. The 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 Goods Agency) to regulate therapeutic goods. The agency will work under a joint regulatory framework, which is being developed. The Australian and New Zealand governments originally expected the agency to commence operations on 1 July 2005, but the Australian Parliament Secretary for Health announced on 9 February 2005 that the governments had agreed to defer the start-up for a year (that is, until 1 July 2006) to enable full consultation with interested parties. The states and territories will need to amend their drugs, poisons and controlled substances legislation, where necessary, to appropriately reference relevant parts of the Australian Government's legislation relating to the trans-Tasman agency.

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 (renamed the Australia New Zealand Food Standards Code in 1995). The code sets standards for the composition, labelling, safety, advertising, fortification and development of food. The objective of food legislation in each jurisdiction is to ensure food is safe for human consumption. One of the ways this is achieved is through the application of the Food Standards Code. 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 a new risk management based approach to food regulation. It also recommended removing some restrictive provisions of food legislation (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 (now the Australia New Zealand Food Standards Code). All states and territories except Western Australia have modified their food legislation and met their CPA obligations in this area. Western Australia anticipates the introduction of its Food Bill in the spring 2005 parliamentary session.

Review of pharmacy regulation

COAG commissioned a major national review of restrictions on competition in Australian, state and territory government pharmacy legislation in 1999. The National Competition Policy 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:

- 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, state and territory government officers. The working group released its report in August 2002, recommending that COAG accept most of the review 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. 12–13)

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 health 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…* (Third Community Pharmacy Agreement 2000, p. 8)

The relevant jurisdictional chapters outline the Council's assessment of each state's and territory's response to the COAG national review processes.

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. It recommended repealing 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 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.

When the Council completed the 2004 NCP assessment, Western Australia and South Australia were yet to implement legislative amendments incorporating the nationally agreed framework. Subsequently, the Western Australian Parliament passed the Architects Bill 2003 on 17 December 2004. South Australia has yet to implement the national framework.

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, 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 related 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.

ARPANSA published the first edition of National Directory for Radiation Protection in August 2004 following the completion of a cost–benefit analysis requested by health ministers. The national directory provides the best practice template that will enable states and territories to complete their legislative and regulatory changes.

The legislative changes required to allow automatic adoption of the national directory are under way. New South Wales implemented the recommendations of the national NCP review via the *Radiation Control (Amendment Act) Act 2002*. It has recently made amendments to allow the Act to reflect the national directory and future changes to the directory. Victoria introduced the Radiation Protection Bill to Parliament on 6 August 2005. Queensland amended its legislation in 1999 when it understood the direction of national change, and so it will not have to make major legislative amendments as a result of the national directory being completed. Western Australia removed restrictions on advertising following the national review report being completed; its legislation is unlikely to require significant changes as a result of the national directory being finished, because its regulation of non-ionising legislation is already consistent with the directory. South Australia's 2005 NCP annual report indicates the state will incorporate provisions of the National Directory in its review of the Act and Regulations, to be completed by June 2006. Tasmania is preparing a Bill that takes the national directory into account. The ACT anticipates that new legislation will be in place by late 2006. The Northern Territory passed the *Radiation Protection Act* in March 2004 and is preparing accompanying Regulations.

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 discussed 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 certain aspects of the scheme would be delegated to the Australian Prudential Regulation Authority (APRA). 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 Attorney General indicated he may reconsider APRA regulation and agreed to take a final submission from the states and territories. The New South Wales Attorney-General made a submission 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.

He subsequently advised the states and territories on 17 March 2005 that the Australian Government would not widen APRA's role to include supervision of the trustee corporations. Now that the Australian Government has confirmed that APRA will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including 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 be members 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. When the review 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, reported to ministers in August 2002, supporting 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 to retain 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 is to oversee implementation of the reforms. This implementation was 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). This work is now finished and all states and territories are progressing towards completing their implementation of 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 required, until recently, 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 the other states and territories. Tasmania enacted a modified template system.

State and territory governments jointly undertook an NCP review of the Consumer Credit Code legislation. (In addition to this review, several jurisdictions 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. It 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).

In September 2005, the Standing Committee of Officials of Consumer Affairs was considering a Consultation Draft Bill prepared in order to implement one of the two recommendations for legislative change in the NCP review. Stakeholder feedback will be obtained before the Bill is finalised and put to the Ministerial Council on Consumer Affairs for sign-off and introduction into the Queensland Parliament, the template state for the Code. 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 other NCP review recommendation, addressing pre-contractual disclosure of key financial information, has also been progressed to consultation draft status. As at September 2005, the Uniform Consumer Credit Code Management Committee is waiting for the NSW Chief Parliamentary Counsel, on behalf of the Parliamentary Counsels Committee, to supply the finalised draft of the proposed amending regulations. This draft will be put to stakeholders for feedback on the method of implementation revealed by the detail in the draft.

Preparation of the draft legislation has been time consuming because it requires consultation on complex implementation issues. For example, changing the disclosure regime will have consequences for financial entities' systems. The Consumer Credit Code changes arising from the post-implementation review and the national NCP review are unlikely to be completed until 2006.

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 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. In May 2004, the ministerial council 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. The consultation process gave rise to a new issue —that is, whether seafood and poultry should be included in the definition of meat. Consumer Affairs Victoria is reviewing issue, and a draft of the consultant's report was circulated to members of the Trade Measurement Advisory Committee for comment. Those comments are being reviewed for incorporation into final documents for approval by SCOCA in late 2005.

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 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, some governments listed their trade measurement (administration) legislation for review. For this legislation, the Council previously assessed Queensland, Tasmania, the ACT and the Northern Territory as having met their CPA clause 5 obligations. In this assessment, the Council has assessed South

Australia as compliant with its CPA clause 5 obligations. Although its legislation does not appear to contain significant competition restrictions, the Council assesses New South Wales as noncompliant because the state is awaiting the national response before implementing reforms.

Regulation of the legal profession

Reforms to the regulation of 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 national model provisions on the 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 covered by recommendations of NCP reviews relating to legal profession regulation. These areas include the implications for addressing competition restrictions 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 relevant jurisdictional chapters outline the Council's assessment of each state's and territory's review and reform progress in relation to regulation of the legal profession.

[1] The Australian Government Office of Regulation Review noted in its 2004 report to the Council on compliance with national standard setting 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 Attorneys-General to endorse them (see NCC 2004, p. 5.4).

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 2004 – 31 March 2005*. The Office of Regulation Review provided this report to the Council on 29 July 2005.

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.

Australian Government
Productivity Commission

Report to the National Competition Council on the Setting of National Standards and Regulatory Action: 1 April 2004 - 31 March 2005

Office of Regulation Review

August 2005

1 Background to the Office of Regulation Review's report

1.1 The COAG requirements

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 2004a as amended). These aim to improve the quality of regulation, including through the adoption of good consultation processes as regulation is developed.

The major element of the assessment process is the preparation of Regulatory Impact Statements (RISs). A RIS documents the policy development process, 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 should be prepared for proposals having a national dimension which, when implemented by jurisdictions, would result in regulatory impacts.

1.2 Decisions covered by the COAG requirements

The application of the COAG Principles and Guidelines is wide in scope. They cover regulatory decisions that:

… would encourage or force businesses or individuals to pursue their interests in ways they would not otherwise have done … . (COAG 2004a as amended, p.2)

COAG defined 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 2004a as amended, p.2)

Accordingly, COAG's requirements cover agreements on standards and measures of a quasi-regulatory nature — such as endorsement of industry codes of conduct — as well as agreements on national regulatory approaches

implemented by legislation, either at the Australian Government or State/Territory level or both.

While there are some 40 Ministerial Councils and a small number of national standard-setting bodies (NSSBs), only around one-third of these make regulatory decisions that require a COAG RIS in any reporting period. This reflects the periodic nature of decision-making processes for most Ministerial Councils and NSSBs, and the fact that some decision-making bodies rarely make decisions of a regulatory or quasi-regulatory nature.

1.3 The role of the Office of Regulation Review

The Office of Regulation Review (ORR) — an autonomous unit within the Productivity Commission — 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.

COAG has directed the ORR to provide independent advice on regulatory best practice processes. As well as advising on the need for a RIS, the ORR must assess whether RISs meet minimum adequacy standards mandated by COAG, given the significance of the regulatory issues under consideration. The ORR bases its assessments on information provided by Ministerial Councils and NSSBs and on information included in each RIS. In undertaking this role, the ORR does not verify the underlying data or methodology. Nor does the ORR endorse or support particular regulatory options or outcomes. It is the Ministerial Council and NSSB preparing the RIS, not the ORR, which is responsible for the content of RISs.

The ORR assesses RISs at two stages: before they are released for community 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.

In addition, the ORR is required, under COAG's Agreement to Implement the National Competition Policy and Related Reforms (NCC 1998a), 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 report covers the

period 1 April 2004 – 31 March 2005, and is the fifth such report by the ORR to the NCC.

2 Recent developments in COAG's requirements for RISs

2.1 Changes to the Principles and Guidelines

At its meeting on 25 June 2004, COAG decided to make a number of changes to the Principles and Guidelines and also to the Broad Protocols for the Operation of Ministerial Councils, which govern the conduct and reporting mechanisms of Ministerial Councils (COAG 2004b). These changes followed an evaluation of the implementation of the Broad Protocols and General Principles for the Operation of Ministerial Councils (PM&C 2002).

The changes aim to enhance the application of the principles of good regulatory practice by COAG, Ministerial Councils, intergovernmental standard-setting bodies and bodies established by government to deal with national regulatory issues and problems. The following changes were made:

- clarification that the Guidelines apply to COAG, as well as to Ministerial Councils and national standard-setting bodies;
- minor or machinery regulatory matters and 'brainstorming' by Ministers — which is not supported by written submissions outlining regulatory options — are exempt from the RIS requirements;
- clarification that the Guidelines apply to bodies preparing advice to Ministerial Councils/standard-setting bodies;
- clarification that, for multi-staged decision making, follow-up RISs for regulation implementing the original decision will not generally be required unless significant additional regulation is contemplated;
- the National Competition Principles Agreement is explicitly acknowledged;
- the importance of early consultation with the ORR and forward notice of the preparation of a RIS is noted;
- where a trans-Tasman issue is involved, the ORR is to refer the draft RIS for consultation to the ORR's counterpart in the New Zealand Government, the Regulatory Impact Analysis Unit (RIAU), to allow feedback on New Zealand issues and impacts — with such feedback being incorporated into the ORR's advice to Ministerial Councils and NSSBs on the adequacy of RISs;

- clarification that the final RIS for the decision makers is to be provided to the ORR for assessment;

- provision is made for genuine regulatory emergencies, with the ORR able to 'post assess', within 12 months, the briefing material prepared for the decision makers; and

- the independent role of the ORR is clarified, including a reference to the ORR not commenting on the merits of regulatory proposals or supporting any particular jurisdiction.

Changes to the Principles and Guidelines also relate to the content of RISs:

- it is emphasised that the principles of the Trans-Tasman Mutual Recognition Arrangement (TTMRA) must be adequately considered;

- it is clarified that a RIS should consider the impact on business and on the broader community; and

- more robust requirements are included to document compliance costs and small business impacts.

2.2Impact of the changes to COAG's RIS requirements

A number of the changes clarify existing ORR processes and methodology which have been applied to COAG RISs over the last few years. These changes will assist with the application of the RIS requirements. More fundamentally, COAG's re-endorsement and strengthening of the Principles and Guidelines has increased awareness of the RIS requirements and the importance of compliance with them.

A significant change to the Principles and Guidelines is the requirement for the ORR to confer with the RIAU in New Zealand on draft consultation RISs. As noted above, this applies where there are New Zealand impacts and issues, such as those arising from a proposal to apply a standard in both Australia and New Zealand, or where a proposal in Australia would affect trans-Tasman trade. A key aim of this new requirement is to ensure that the analysis in the consultation RIS reflects potential impacts in both Australia and New Zealand. These changes will also encourage better and earlier dialogue between regulators in each country.

To support the application of this new requirement, the ORR and the RIAU have established a Protocol between the two offices (PC & MED 2004). The Protocol, agreed in September 2004, sets out the operational arrangements for interaction between the ORR and the RIAU in order to meet COAG's requirement. These arrangements include the following:

- identification by the ORR, in consultation with the RIAU as necessary, of any trans-Tasman issues for particular regulatory proposals;

- where a proposal raises trans-Tasman issues, the ORR provides the draft consultation RIS to the RIAU for comments, in particular on the trans-Tasman impacts of the particular regulatory proposal; and

- the ORR advises the Ministerial Council (or standard-setting body) of its assessment of the draft consultation RIS, incorporating any comments from the RIAU.

At the time of reporting to the NCC, the ORR had sent five RISs to the RIAU for comment. The ORR had also discussed with the RIAU the potential trans-Tasman issues and impacts of a number of other ongoing proposals. As none of the five matters had reached the decision-making stage by 31 March 2005, they are not included in this report. For all five matters, the relevant New Zealand Minister is a member of the final decision-making body.

A copy of the Protocol has been provided to the secretariats of all Ministerial Councils and standard-setting bodies, and is publicly available. It is intended that this Protocol will evolve over time to ensure the continued effectiveness and efficiency of these arrangements.

2.3 Changes to the Broad Protocols for the Operation of Ministerial Councils

COAG also agreed to a number of changes to the Broad Protocols for the Operation of Ministerial Councils (COAG 2004c) directed towards improving the operation of Ministerial Council decision-making processes and the coordination of related policy development processes. They include specific requirements for timely meetings of officials prior to meetings of Ministerial Councils, for the timely circulation of final agendas and papers to Ministers, and for copies of minutes from Ministerial Council meetings to be forwarded to the Department of the Prime Minister and Cabinet. The changes are expected to result in Ministerial Council agendas having a greater focus on strategic issues, improved reporting and information flows between Ministerial Councils on key issues and outcomes, and regular reviews by Ministerial Councils of their own functions.

3 Reporting on compliance at consultation and at decision

3.1 The focus and scope of the ORR's report

This report includes an assessment by the ORR of compliance at each of the community consultation and decision-making stages of the policy development process. An assessment of compliance at consultation is included where the final decision was made between 1 April 2004 and 31 March 2005, even where such consultation occurred before 1 April 2004.

Prior to 25 June 2004, in cases where a RIS had not been prepared, the ORR had in some cases undertaken an ex poste assessment of the consultation or decision documentation against COAG's RIS requirements. This approach was adopted as a transitional measure to cover cases where best practice may have been substantively followed, despite a lack of awareness of COAG's RIS requirements.

COAG's June 2004 decision limited the application of ex poste assessment to cases of genuine emergency and has effectively ruled out ex poste assessments for other matters. Therefore, for this reporting period, in the absence of a RIS the ORR has only assessed the relevant documentation ex poste where the consultation or decision occurred before 25 June 2004. Any assessments that the requirements have been met on an ex poste basis are identified in Section 3.3 below. This is a transitional reporting arrangement - future ORR reports will only contain ex poste assessments for cases of genuine emergency.

3.2 Matters for which COAG's requirements were fully met

Table 3.1 documents the 19 decisions made during the period 1 April 2004 – 31 March 2005 where the COAG RIS requirements applied and were met at both the consultation stage and the decision-making stage. The table includes a brief description of the regulatory measure, the decision-making body and the date of the final decision.

Table 3.1 Cases where COAG RIS requirements were met at both the consultation and the decision-making stages

	Measure	*Body responsible*	*Date of decision*
1	National Health Assessment Guidelines for Rail Safety Workers	Australian Transport Council	1 April 2004
2	Quality of active constituents used in Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 May 2004
3	Building Codes of Australia 2004 Volumes 1 and 2: reform of the sound insulation provisions	Australian Building Codes Board	1 May 2004
4	Code of Practice and Safety Guide for Portable Density/Moisture Gauges Containing Radioactive Sources	Australian Radiation Protection and Nuclear Safety Agency	18 May 2004
5	Australian Model Code of Practice for the Welfare of Animals – Cattle	Primary Industries Ministerial Council	19 May 2004
6	Introduction of Minimum Energy Performance Standards for Single Phase Refrigerated Air Conditioners and increasing the stringency of requirements for single-phase and three-phase air conditioners	Ministerial Council on Energy	31 May 2004
7	Introduction of Revised Minimum Energy Performance Standards for Electric Motors	Ministerial Council on Energy	31 May 2004
8	Introduction of Minimum Energy Performance Standards for Linear Fluorescent Lamps	Ministerial Council on Energy	31 May 2004
9	Adverse Experience Reporting Program for Agricultural Chemical Products	Australian Pesticides and Veterinary Medicines Authority	1 July 2004
10	Introduction of Minimum Energy Performance Standards for Commercial Refrigeration	Ministerial Council on Energy	12 July 2004
11	National Standard for Recreational Vessels – Safety Equipment	Australian Transport Council	23 July 2004
12	National Directory for Radiation Protection, Edition 1.0	Australian Health Ministers' Conference	29 July 2004
13	Implementation Plan for the National Mine Safety Framework	Ministerial Council on Mineral and Petroleum Resources	29 July 2004

(Continued on next page)

Table 3.1 (continued)

Measure		*Body responsible*	*Date of decision*
14	Australian Design Rule ADR 18/03 – Standards for Instrumentation	Australian Transport Council	1 August 2004
15	Amendments to the Adopted National Exposure Standards for Atmospheric Contaminants in the Occupational Environment: Exposure Standard for Crystalline Silica	National Occupational Health and Safety Commission	1 October 2004
16	Approved Criteria for Classifying Hazardous Substances	National Occupational Health and Safety Commission	1 October 2004
17	National Standard for Commercial Vessels – Part E: Operational	Australian Transport Council	19 November 2004
18	Ensuring the Enduring Good Manufacturing Practice Compliance of Overseas Veterinary Manufacturers	Australian Pesticides and Veterinary Medicines Authority	17 February 2005
19	Australian Design Rules — Post 2006 Light and Heavy Vehicle Emission Standards	Australian Transport Council	1 March 2005

Sources: ORR data and information provided by Ministerial Councils and NSSBs.

3.3 Matters for which COAG's requirements were partially met

During the period 1 April 2004 – 25 June 2004, there was only one matter for which COAG's RIS requirements applied and were partially met. This was COAG's decision of 25 June 2004 to endorse the National Water Initiative. A RIS was not prepared at the earlier consultation stage. However, a Discussion Paper was prepared and released by the Senior Officials' Group on Water. The ORR assessed the Discussion Paper, after its release, as substantively following regulatory best practice in line with COAG's requirements. A RIS was prepared at the decision-making stage, and assessed as adequate by the ORR.

3.4 Matters for which COAG's requirements were not met

Table 3.2 indicates that, during the period 1 April 2004 – 31 March 2005, the COAG RIS requirements were not met at the consultation stage and/or the decision stage in four cases.

Commentary on the individual decisions, including the reasons why the matters were considered to be non-compliant, is provided below the table. In all of these cases the decision-making body appears to have been aware of COAG's requirements and either did not contact the ORR at the appropriate time or did not follow the advice provided by the ORR.

Table 3.2 Cases where COAG RIS requirements were not met at the consultation and/or the decision-making stage

	Measure	*Body responsible*	*Date of decision*	*Compliance consultation*	*Compliance decision*
1	Regulation of pre-market assessment for biomarker maintenance claims	Australia and New Zealand Food Regulation Ministerial Council	28 May 2004	No	No
2	National regulation of ammonium nitrate	COAG	25 June 2004	No	Yes
3	Amendments to the regulation of firearm use by the security industry	Australasian Police Ministers' Council	30 June 2004	No	No
4	National Plumbing Code of Australia	National Plumbing Regulators Forum	December 2004	No	No

Sources: ORR data and information provided by Ministerial Councils and NSSBs.

3.5 Commentary on non-compliant matters

Regulation of pre-market assessment for biomarker maintenance

On 28 May 2004, the Australia and New Zealand Food Regulation Ministerial Council (ANZFRMC) decided that biomarker maintenance claims on food were to be regulated in the same way as for biomarker enhancement claims1; that is, manufacturers would be required to apply to Food Standards Australia New Zealand (FSANZ) for approval of a biomarker maintenance claim prior to releasing the product onto the market. This led to changes to the Council's Policy Guidelines on Nutrition, Health and Related Claims.

[1] A biomarker is one indicator of a person's risk of developing a serious disease, For example, blood cholesterol is a biomarker for the risk of heart disease. (Australia and New Zealand Food Regulation Ministerial Council, 2004, p 5) An example of a biomarker maintenance claim is "This food is low in saturated fat which, as part of a diet low in saturated fat, may help to maintain a healthy blood cholesterol level". (Food Standards Australia New Zealand, 2004, page 40)

These Guidelines are taken into consideration by FSANZ in progressing the development of a standard for nutrition, health and related claims on food.

The ORR advised the secretariat that a COAG RIS may be required and requested relevant documentation on the proposal going to Ministers to confirm this advice. The documentation was not provided to the ORR either before or after the Ministers' decision. Nor was a RIS prepared for consultation on the proposal or for the decision by Ministers.

National regulation of ammonium nitrate

On 25 June 2004, COAG agreed to regulate access to ammonium nitrate on a national basis. This followed a review of the regulation, reporting and security around the storage, sale and handling of hazardous materials relevant to counter-terrorism. COAG's agreement will result in the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate. The regime will ensure that ammonium nitrate is only accessible to persons who have demonstrated a legitimate need for the product, are not a security concern and who will store and handle the product safely and securely.

A COAG RIS was not prepared for consultation on the proposal. However a RIS, assessed as adequate by the ORR, was prepared for the decision-making stage.

Amendments to the regulation of firearm use by the security industry

On 30 June 2004, the Australasian Police Ministers' Council (APMC) agreed to further regulate the use of firearms in the private security industry. While preliminary contact was made with the ORR, the APMC did not prepare a RIS at either the consultation or the decision-making stage.

Since this decision was made, the Council secretariat has met with the ORR to agree a range of strategies that will lead to the integration of the COAG RIS requirements and the Council's operating practices.

National Plumbing Code of Australia

In December 2004, the National Plumbing Regulators Forum (NPRF) agreed to the National Plumbing Code of Australia. The Code sets out technical provisions for plumbing and drainage installations in Australia. It also sets out requirements for the use of plumbing materials and products and the

process for certification and authorisation of materials and products that require statutory authorisation.

The adoption of the Code by a State or Territory government could be subject to the variation or deletion of some of its provisions, or the addition of extra provisions. Any provision of the Code may be overridden by, or subject to, State and Territory legislation. Therefore, adoption of the Code is essentially voluntary for each State and Territory. However, there is a reasonable expectation that its promotion by the NPRF on behalf of each State and Territory government could be interpreted as requiring full or partial compliance. As such, the ORR assessed that the Code was quasi-regulatory and required a RIS.

The NPRF prepared a draft RIS for consultation. The ORR assessed this draft as inadequate because it did not meet the COAG requirements and provided comments to address this inadequacy. However, the RIS was not developed further before public release. Nor was a RIS prepared for the final decision-making stage.

4 Trends in compliance with COAG's RIS requirements in the year to 31 March 2005

4.1 At the consultation stage

While COAG requires a RIS at both consultation and at decision making, the RIS requirements 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 and robust impact analysis.

In relation to decisions covered by this report, compliance at consultation was less than at the decision-making stage. This is notwithstanding the preliminary nature of the RIS required for consultation.

An adequate consultation RIS was prepared for 83 per cent of matters. This result is slightly above the 82 per cent compliance rate achieved in the previous reporting period.

4.2 At the decision-making stage

Of the 24 decisions by Ministerial Councils and national standard-setting bodies reported during the year to 31 March 2005, compliance with COAG's requirements was 88 per cent. This is the same as the RIS compliance rate for the previous reporting period.

4.3 For significant regulatory matters

As discussed in earlier ORR reports to the NCC, an important consideration in measuring RIS 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 are 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 24 regulatory decisions reported here, six were assessed by the ORR as of greater significance according to the above criteria. They are as follows:

- the decision of 1 May 2004 by the Australian Building Codes Board to amend the Building Codes of Australia to introduce construction standards aimed at reducing residential amenity problems caused by the transition of sound between units in multi-unit dwellings. This amendment will impact on owners, builders and tenants of new and renovated units in multi-unit dwellings;

- the decision by the Ministerial Council on Energy on 31 May 2004 to revise Minimum Energy Performance Standards for 3-phase electric motors. This aims to increase energy efficiency and reduce greenhouse gas emissions;

- the further decision by the Ministerial Council on Energy on 12 July 2004 to introduce new performance standards for commercial refrigeration cabinets. This has similar aims to that for the Council's decision on electric motors;

- the decision of 1 October 2004 by the National Occupational Health and Safety Commission to amend the National Exposure Standard for Crystalline Silica in the workplace. The amendment establishes a lower exposure standard for workers exposed to respirable quartz in the workplace. Silica dust is a common by-product of work activity in a range of industries including mining, quarrying, iron and steel foundries, and construction;

- the agreement by COAG, on 25 June 2004, to the National Water Initiative covering a range of measures to achieve greater compatibility across jurisdictions and the adoption of best-practice approaches to water management nationally; and

- on 25 June 2004, COAG also agreed to the national regulation of ammonium nitrate involving the establishment in each jurisdiction of a licensing regime for the use, manufacture, storage, transport, supply, import and export of ammonium nitrate.

The RISs for all but the last decision were compliant with COAG's requirements at both the consultation and decision-making stages and contained a level of analysis commensurate with the significance and impact of the proposal (one of these — the National Water Initiative — had qualified compliance at consultation). For the last decision — national regulation of

ammonium nitrate — the COAG requirements were not met at the consultation stage, but were met at the decision-making stage.

In summary, the compliance results for the six matters of 'greater significance' are 83 per cent at consultation and 100 per cent at decision making. While comparisons from year to year are only indicative given the relatively small number of significant matters in each reporting period, the ORR notes that compliance for the current period is significantly higher than the 57 per cent at consultation and 57 per cent at decision making in the previous reporting period.

5 Trends in RIS compliance: 2000-01 to 2004-05

Table 5.1 summarises compliance results for all proposals covered by the ORR's five reports to the NCC.

Table 5.1 COAG RIS compliance for regulatory decisions made by Ministerial Councils and NSSBs, 2001-01 to 2004-05a

	2000-01	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Compliance (qualified and full) at the consultation stage	*n/a*	*n/a*	*n/a*	*28/34*	*20/24*
				82%	***83%***
Compliance (qualified and full) at the decision-making stage	*15/21*	*23/24*	*24/27*	*30/34*	*21/24*
	71%	***96%***	***89%***	***88%***	***88%***
Compliance (qualified and full) for significant regulatory proposals					
Consultation stage	*n/a*	*n/a*	*n/a*	*4/7*	*5/6*
				57%	***83%***
Decision making stage	*5/9*	*6/6*	*4/6*	*4/7*	*6/6*
	59%	***100%***	***67%***	***57%***	***100%***

n/a not available. **a** Data for 2000-01 relate to the period 1 July 2000 to 31 May 2001. For subsequent years, data relate to the period 1 April to 31 March, in line with a change in the reporting period as requested by the NCC. In relation to assessments for 2003-04, matters where RIS requirements were reported as partially met were treated as compliant for purposes of consistency with reporting in previous reporting periods.

Sources: ORR data and information provided by Ministerial Councils and NSSBs.

Given the small numbers with which to make comparisons over time, the trends are indicative only. However, broad compliance issues have been identified, as discussed below.

5.1 Compliance issues emerging over time

Examining patterns of non-compliance, and also the characteristics of Ministerial Councils and NSSBs that have been fully compliant, can shed some light on RIS compliance issues.

Table 5.2 lists in alphabetical order the twelve Councils/NSSBs that have not been fully compliant with COAG's requirements between 2000-01 and 2004-05. The table sets out (on the left hand side) for each decision-making body the number of decisions in each reporting period that have been compliant compared to the total number of decisions requiring a RIS (on the right hand side). For example, a result of 0/1 would illustrate that one RIS was required and that the RIS requirements were not met in this case.

Table 5.2 COAG RIS compliance for Ministerial Councils and NSSBs with one or more non-compliant decisions between 2000-01 and 2004-05

Council/NSSBs *Compliant[a]/total decisions made*	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Australasian Police Ministers' Council	-	-	0/1	-	0/1
Australia and New Zealand Food Regulation Ministerial Council[c]	1/3	3/3	4/4	1/2	0/1
Australian Health Ministers' Advisory Council	0/1	-	-	-	-
Australian Transport Council	6/7	7/7	8/8	15/15	5/5
Council of Australian Governments[b]	2/2	-	-	-	2/2
Ministerial Council on Consumer Affairs	0/1	1/1	0/1	-	-
Ministerial Council on the Australian National Training Authority	0/1	-	2/2	-	-
Ministerial Meeting on Insurance Issues	-	-	0/1	1/2	-
National Environment Protection and Heritage Council[d]	-	2/2	-	0/1	-
National Plumbing Regulators' Forum	-	-	-	-	0/1
Standing Committee of Attorneys-General	-	-	-	0/1	-
Standing Committee of Attorneys-General (Censorship)	-	0/1	-	-	-

[a] Compliant decisions include those reported as partially compliant. [b] For one matter covered by the 2004-05 report, COAG was non-compliant at the consultation stage, hence is included in this table. [c] On 1 July 2002 this Council replaced the Australia New Zealand Food Standards Council. [d] COAG agreed on 8 June 2001 to the creation of the National Environment Protection and Heritage Council, comprising the National Environment Protection Council (NEPC), the environment protection components of the Australian and New Zealand Environment and Conservation Council (ANZECC), and the Heritage Ministers' Meetings.

Sources: ORR data and information provided by Ministerial Councils and NSSBs.

Although the numbers are small, table 5.2 illustrates that variations in compliance appear not only between Ministerial Councils/NSSBs but also between decisions taken by individual Ministerial Councils/NSSBs over time.

From the ORR's experience with individual decisions of these Ministerial Councils/NSSBs, the main reasons for non-compliance include:

- a poor understanding of COAG's requirements and the broad scope of their application;

- a poor understanding of the regulatory impacts of national decision making;
- a lack of contact with the ORR before consultation takes place on regulatory proposals and also prior to decision making; and
- a lack of follow-up on ORR advice.

More fundamentally, both the patchy nature of compliance by some of these decision-making bodies and the specific reasons for non-compliance tend to suggest that COAG's RIS requirements have not been incorporated into their operating practices.

Table 5.3 sets out comparable data for the thirteen Ministerial Councils and NSSBs that have been fully compliant over the period of the five reports.

Table 5.3 COAG RIS compliance for Ministerial Councils and NSSBs fully compliant with COAG's RIS requirements between 2000-01 and 2004-05

Council/NSSB Compliant/total decisions made	*2000-01*	*2001-02*	*2002-03*	*2003-04*	*2004-05*
Australian Building Codes Board	-	2/2	2/2	1/1	1/1
Australian Health Ministers' Conference	-	-	2/2	1/1	1/1
Australian Pesticides and Veterinary Medicines Authority[a]	-	-	-	-	3/3
Australian Radiation Protection and Nuclear Safety Agency	-	1/1	1/1	-	1/1
Austroads	-	1/1	-	-	-
Food Standards Australia New Zealand	-	-	-	1/1	-
Gene Technology Ministerial Council	-	-	-	1/1	-
Ministerial Council on Energy[b]	2/2	4/4	-	1/1	4/4
Ministerial Council on Mineral and Petroleum Resources[c]	1/1	-	-	-	1/1
National Occupational Health and Safety Commission	-	1/1	-	6/6	2/2
Primary Industries Ministerial Council[d]	1/1	1/1	5/5	2/2	1/1
Tourism Ministers' Council	1/1	-	-	-	-
Workplace Relations Ministers' Council	1/1	-	-	-	-

[a] The Australian Pesticides and Veterinary Medicines Authority was formerly the National Registration Authority. [b] COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Energy. This subsumed the energy component of the Australian and New Zealand Minerals and Energy Council (ANZMEC). [c] COAG agreed on 8 June 2001 to the creation of a new Ministerial Council on Minerals (subsequently known as the Ministerial Council on Mineral and Petroleum Resources), which comprised the mineral component from ANZMEC. [d] The Primary Industries Ministerial Council was created in 2001, subsuming primary industries policy from the Agricultural and Resource Management Council of Australia and New Zealand (ARMCANZ) and the Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA).

Sources: ORR data and information provided by Ministerial Councils and NSSBs.

A number of these bodies make regulatory decisions infrequently (table 5.3), yet they have been fully compliant with the COAG requirements.

Further, a number of the decision-making bodies listed in table 5.3 have adopted regulatory best practice beyond the formal COAG requirements, by making public the final RIS for decisions. As noted in the ORR's fourth

report, these bodies include the Australian Building Codes Board, the National Occupational Health and Safety Commission and the Gene Technology Ministerial Council (PC 2004, page 83). Food Standards Australia New Zealand also follows this practice. The public release of final RISs prepared for the decision-making stage of the policy development process demonstrates their commitment to regulatory best practice and transparent policy development processes.

5.2Improving compliance

COAG's decision in June 2004 to re-endorse and strengthen the Principles and Guidelines, and to more clearly specify the governance requirements of Ministerial Councils, is expected to increase the awareness of Ministers, decision makers and officials with the requirements over time and to improve decision-making processes generally.

The compliance outcome for this period combined with earlier periods suggests a range of strategies is required to improve compliance with COAG's regulatory best practice processes.

With respect to regulatory decision making, where it appears that there are problems in consistently meeting COAG's requirements, the ORR proposes in its next report to identify those Councils and standard-setting bodies where there appear to be systemic issues in achieving compliance with COAG's RIS requirements.

The ORR recognises a need for continued regular contact with secretariats of Ministerial Councils/NSSBs to ensure ongoing awareness of the scope of the COAG RIS requirements, the required level of analysis and the role of the ORR. In addition, the ORR's website will continue to be enhanced to ensure that it remains a reliable and comprehensive source of information on COAG's RIS requirements and the role of the ORR.

Training of officials is another way to maintain awareness of the requirements. In addition to the 50 Ministerial Council and NSSB officials that were trained in the previous reporting period, the ORR provided training to over 100 officials in the current reporting period. The ORR will continue this training effort in the coming period, with a focus on those decision-making bodies where compliance has been uneven or poor.

Finally, the ORR will continue to publicise and encourage the adoption of non-mandatory best practice measures by Ministerial Councils and NSSBs, such as publishing final RISs which were considered by decision makers.

References

Australia and New Zealand Food Regulation Ministerial Council, 2004, *Nutrition, Health and Related Claims Policy Guideline*, http://www.health.gov.au/internet/wcms/publishing.nsf/Content/foodsecretariat-policydocs.htm/$FILE/nutrition_guidelines.pdf (accessed 23 May 2005)

COAG (Council of Australian Governments) 2004a as amended, *Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard-Setting Bodies* http://www.coag.gov.au/meetings/250604/coagpg04.pdf (accessed 12 May 2005)

—— 2004b, *Council of Australian Governments' Communiqué*, 25 June 2004, http://www.coag.gov.au/meetings/250604/comunique260604.pdf (accessed 12 May 2005)

—— 2004c, *Broad Protocols for the Operation of Ministerial Councils*, http://www.coag.gov.au/meetings/250604/attachments_e.pdf (accessed 12 May 2005)

—— 2004d, *General Principles for the Operation of Ministerial Councils*, http://www.coag.gov.au/meetings/250604/attachments_f.pdf (accessed 12 May 2005)

Food Standards Australia New Zealand, 2004, *Initial Assessment Report P293 - Nutrition, Health and Related Claims*, 13 October 2004, http://www.foodstandards.gov.au/_srcfiles/Full_report_IARandattachments.pdf (accessed 25 May 2005)

NCC (National Competition Council) 1998, *Compendium of National Competition Policy Agreements*, 2nd edition, http://www.ncc.gov.au/pdf/PIAg-001.pdf (accessed 12 May 2005)

PM&C (Department of the Prime Minister and Cabinet) 2002, *Broad Protocols and General Principles for the Operation of Ministerial Councils*.

PC (Productivity Commission) 2004, *Regulation and its Review 2003-04*, Annual Report Series, Productivity Commission, Canberra. http://www.pc.gov.au/research/annrpt/reglnrev0304/reglnrev0304.pdf (accessed 12 May 2005)

PC & MED (Productivity Commission and New Zealand Ministry of Economic Development) 2004, *Protocol between the Office of Regulation Review and the Regulatory Impact Analysis Unit*, http://www.pc.gov.au/orr/reports/guide/protocol/protocol.pdf (accessed 12 May 2005)

Appendix B National Competition Policy contacts

For further information about the National Competition Policy, please contact the National Competition Council or the relevant Australian Government, state or territory competition policy unit.

National

National Competition Council
Level 9
128 Exhibition Street
MELBOURNE VIC 3000
Telephone: (03) 9285 7474
Facsimile: (03) 9285 7477
www.ncc.gov.au

Australian Government

Competition Policy Framework Unit
Competition & Consumer Policy Division
The Treasury
Langton Crescent
PARKES ACT 2600
Telephone: (02) 6263 3997
Facsimile: (02) 6263 2937
www.treasury.gov.au

New South Wales

Inter-governmental & Regulatory Reform Branch
The Cabinet Office
Level 37
Governor Macquarie Tower
1 Farrer Place
SYDNEY NSW 2000
Telephone: (02) 9228 5414
Facsimile: (02) 9228 4408
www.nsw.gov.au

Victoria

Economic, Social and Environmental Group
Dept. of Treasury and Finance
10th Floor, 1 Macarthur Street
MELBOURNE VIC 3002
Telephone: (03) 9651 6470
Facsimile: (03) 9651 5414
www.dtf.vic.gov.au

Queensland

Regulatory and Inter-Governmental Relations Branch
Queensland Treasury
100 George Street
BRISBANE QLD 4000
Telephone: (07) 3238 3358
Facsimile: (07) 3225 1600
www.treasury.qld.gov.au

Western Australia

Competition Policy Unit
WA Treasury
Level 12, 197 St George's Terrace
PERTH WA 6000
Telephone: (08) 9222 9825
Facsimile: (08) 9481 0652
www.dtf.wa.gov.au

South Australia

National Competition Policy Implementation Unit
Cabinet Office
Department of Premier & Cabinet
Level 14,
State Administration Centre
200 Victoria Square
ADELAIDE SA 5000
Telephone: (08) 8226 1931
Facsimile: (08) 8226 1111
www.premcab.sa.gov.au

Tasmania

Economic Policy Branch
Department of Treasury and Finance
Franklin Square Offices
21 Murray Street
HOBART TAS 7000
Telephone: (03) 6233 3100
Facsimile: (03) 6233 5690
www.treasury.tas.gov.au

Australian Capital Territory

Micro Economic Reform Unit
Dept. of Treasury
Level 1, Canberra-Nara Centre
1 Constitution Avenue
CANBERRA CITY ACT 2601
Telephone: (02) 6207 0324
Facsimile: (02) 6207 0267
www.treasury.act.gov.au/competition

Northern Territory

Policy & Coordination Unit
Dept. of Chief Minister
4th Floor, NT House
22 Mitchell Street
DARWIN NT 0800
Telephone: (08) 8999 5174
Facsimile: (08) 8999 7402
www.nt.gov.au

References

Abbott, the Hon. T (Minister for Health and Ageing) 2004, *Health Legislation Amendment (Podiatric Surgery and Other Matters) Bill*, Second reading, House of Representatives, *Hansard*, 1 April.

ACCC (Australian Competition and Consumer Commission) 2001, *Reducing fuel price variability*, Canberra.

—— 2002, *Terminal gate pricing arrangements in Australia and other fuel pricing arrangements in Western Australia*, Canberra.

Baker, J 1996, *Conveyancing fees in a competitive market*, Justice Research Centre, Sydney.

Banks, G 2005, *'Regulation-making in Australia: Is it broke? How can we fix it?'*, Paper presented to public lecture series, the Australian Centre of Regulatory Economics and the Faculty of Economics and Commerce, ANU, Canberra, 7 July.

BCA (Business Council of Australia) 2005, *Business regulation action plan for future prosperity*, Melbourne, May.

Beattie, the Hon. P (Premier and Treasurer of Queensland) 2005, *'Choice comes to Queensland electricity consumers'*, Media release, 28 September.

Chance, the Hon. K (Minister for Agriculture, Forestry and Fisheries) 2004, *'Consumers and growers benefit from new potato plan'*, Media release, 1 July.

COAG (Council of Australian Governments) 1997, *Principles and guidelines for national standard setting and regulatory action by ministerial councils and standard-setting bodies*, Canberra.

—— 2000, *Communiqué*, Canberra, 3 November.

—— 2002, *COAG senior officials working group commentary on the National Competition Policy review of pharmacy*, Canberra.

—— 2005, *Communiqué*, Canberra, 3 June.

COAG Energy Market Review 2002, *Towards a truly national and efficient energy market*, Canberra.

DCITA (Department of Communications, Information Technology and the Arts) 2002, *Report on review of the operation of schedule 6 of the Broadcasting Services Act 1992 (datacasting services)*, Canberra.

Department of Health and Ageing (Australian Government) 2000, *Third Community Pharmacy Agreement between the Commonwealth of Australia and the Pharmacy Guild of Australia, 1 July 2000 to 30 June 2005*, Canberra.

Department of Justice 2003, *National Competition Policy review, legal practice legislation, Competition Impact Statement*, http://www.justice.qld.gov.au/dept/pdfs/cis0704.pdf, accessed 1 August 2005.

Electricity Reform Task Force (Western Australia) 2002, *Electricity reform in Western Australia 'A framework for the future'*, Final report, Perth.

ESCOSA 2005, *Completed small customer electricity & gas transfers to market contracts: schedule*, Adelaide, May.

Fisheries Victoria 2003, *Rock Lobster Fishery Management Plan*, Melbourne, June.

Forestry Tasmania 2003, *Annual report 2002-03*, Hobart.

Government of Australia 2005, *Federal financial relations 2005-06*, Budget paper no. 3, Canberra.

Government of New South Wales 2004a, *Supplementary report on the application of National Competition Policy in New South Wales*, Sydney.

—— 2004b, *Energy directions green paper*, Sydney.

—— 2005a, *Report to the National Competition Council on the application of National Competition Policy in New South Wales*, Sydney.

—— 2005b, *Supplementary report to the National Competition Council on the application of National Competition Policy in New South Wales*, Sydney.

Government of the Northern Territory 2004, *Report to the National Competition Council – implementation of National Competition Policy*, Darwin.

Government of Queensland 2003, *National Competition Policy review: legal practice legislation: competition impact statement*, Brisbane.

—— 2005, *Ninth annual report to the National Competition Council*, Brisbane.

Government of South Australia 2005, *Annual report on the implementation of National Competition Policy and related reforms in South Australia*, Adelaide.

Government of Tasmania 2005, *National Competition Policy, progress report*, Department of Treasury and Finance, Hobart.

Government of the ACT 1999, *National Competition Policy review of ACT health professional regulation,* Department of Health and Community Care, Canberra.

—— 2002, *Third tranche progress report to the National Competition Council on implementing National Competition Policy and related reforms*, Canberra.

—— 2003, *Follow-up to 2003 annual report*, Correspondence, 18 June.

—— 2004a, *Follow-up to 2004 annual reports: ACT response to NCC request for supplementary information*, Correspondence, 1 July.

—— 2004b, *Explanatory statement to the Pharmacy Amendment Bill (No. 2) 2004*, Canberra, 14 May.

—— 2005, *Progress report to the National Competition Council on implementing National Competition Policy and related reforms*, Canberra

Government of Victoria 1999, *Second tranche assessment report: volume 1*, Melbourne.

—— 2004, *National Competition Policy: Report for the 2004 assessment on Victoria's implementation of National Competition Policy*, Melbourne.

—— 2005, *National Competition Policy: Report for the 2005 assessment on Victoria's implementation of National Competition Policy*, Melbourne.

Government of Western Australia 2001a, *Public interest guidelines for legislation review*, Competition Policy Unit, Department of Treasury and Finance, Perth.

—— 2001b, *Key directions, review of Western Australian health practitioner legislation*, Legal and Legislative Services Branch, Health Department of Western Australia, Perth.

—— 2002, *National Competition Policy legislation review — Marketing of Potatoes Act 1946, Marketing of Potatoes Regulations 1987*, Department of Agriculture, Perth.

—— 2005a, *Final progress report: implementing National Competition Policy in Western Australia — Report to the National Competition Council*, Perth.

—— 2005b, *Western Australia's response to follow up questions — 2005 assessment,* Perth.

Howard, the Hon J (Prime Minister) 2002, '*Publication of the CoAG Working Group's response to the National Competition Policy review of pharmacy*', Media release, 2 August.

—— 2004, *'Pharmacy and National Competition Policy'*, Media release, 5 May.

IPART (Independent Pricing and Regulatory Tribunal, New South Wales) 1999, *Review of the taxi cab and hire car industries*, Final report, Sydney.

Irving, M, Arney, J and Lindner, B 2000, *National Competition Policy review of the Wheat Marketing Act 1989*, NCP–WMA Review Committee, Canberra.

Macdonald, the Hon. I (Minister for Fisheries, Forestry and Conservation) 2005, *Poultry Meat Industry Amendment (Prevention of National Competition Policy Penalties) Bill*, Second reading, New South Wales Legislative Council, *Hansard*, 7 June.)

Ministry of Transport (New South Wales) 2004, *Taxi industry inquiry interim report*, www.transport.nsw.gov.au/taxi/taxi-inquiry-interim-report.doc, accessed 19 August 2005.

MMA (McLennan Magasanik Associates) 2003, *Gas FRC Cost Benefit Assessment Attachment 6 — Report to Queensland Office of Energy,* Queensland Treasury, Brisbane.

NCC (National Competition Council) 1998a, *Compendium of National Competition Policy agreements*, 2nd edn, Melbourne.

—— 1998b, *Review of the Australian Postal Corporation Act: final report. Volume 1*, Melbourne.

—— 1999, *National Competition Policy and related reforms first tranche assessment. Volume 1: assessment of Commonwealth, state and territory progress*, Melbourne.

—— 2002, *Assessment of governments' progress in implementing the National Competition Policy and related reforms*, *Volume 1*, Melbourne.

—— 2003a, *Assessment of governments' progress in implementing National Competition Policy and related reforms*, *Volume 1*, Melbourne.

—— 2003b, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume two—Legislation review and reform*, Melbourne.

—— 2004, *Assessment of governments' progress in implementing the National Competition Policy and related reforms: Volume one—Assessment*, Melbourne.

New South Wales Department of Gaming and Racing 2002, *Discussion paper, National Competition Policy review of the New South Wales Liquor Act 1982 and Registered Clubs Act 1976*, Sydney.

—— 2003, *Final report National Competition Policy review, New South Wales Liquor Act 1982 and Registered Clubs Act 1976*, Sydney.

NSW Government Review Group 1995, *Review of the legislation establishing the NSW Rice Marketing Board*, Final report, Sydney, November.

OECD (Organisation for Economic Cooperation and Development) 2005, *OECD economic surveys 2004, Australia*, vol. 2004/18, Paris, February.

PC (Productivity Commission) 1999, *Australia's gambling industries*, Report no. 10, Canberra.

—— 2000, *Broadcasting*, Report no. 11, Canberra.

—— 2001, *Regulation and its review 2000-01*, Canberra.

—— 2002, *Radiocommunications*, Report no. 22, Canberra.

—— 2004a, *Regulation and its review 2003-04*, Annual Report Series, Canberra.

—— 2004b, *Impacts of Native Vegetation and Biodiversity Regulations*, Report no. 29, Melbourne.

—— 2004c, *National workers' compensation and occupational health and safety frameworks*, Report no. 27, Canberra.

—— 2005a, *Review of National Competition Policy reforms*, Report no. 33, Canberra.

—— 2005b, *Financial performance of government trading enterprises, 1999-00 to 2003-04*, Commission research paper, Canberra.

—— 2005c, *Financial performance of government trading enterprises, 1999-00 to 2003-04*, Media release, 7 July.

PWC (Price Waterhouse Coopers) 2004, *Department of Justice: NCP review of Legal Practitioners Bill*, http://www.vicbar.com.au/pdf/PWC%20final%20report%2020%2005%2004.pdf, accessed 20 May 2005.

RSM Bird Cameron 2005, *Review of the benefits and costs of the operations of the Grain Marketing Act 2002 and the Grain Licensing Authority,* Perth.

SCAG (Standing Committee of Attorneys-General) 2004, *Legal profession — model laws project: model provisions*, Canberra.

Standing Committee on Forests 1996, *National principles for forest practices related to wood production in plantations*, Canberra.

Third Community Pharmacy Agreement 2000, *Third Community Pharmacy Agreement between the Commonwealth of Australia and the Pharmacy Guild of Australia, 1 July 2000 to 30 June 2005,* Canberra.

Transport SA 2000, *Competition policy review of the accident towing legislation under the Motor Vehicles Act 1959 and accident towing roster scheme Regulations 1984*, Final report, Adelaide.

Wilkinson, W 2000, *Final report of the National Competition Policy review of pharmacy*, Canberra.