11 New South Wales

A1 Agricultural commodities

Grain Marketing Act 1991

The Grain Marketing Act vested ownership of all barley, sorghum, oats, canola, safflower, sunflower, linseed and soybeans grown in New South Wales in the New South Wales Grains Board. A group of State Government representatives and four industry representatives completed a review of the Act in July 1999. A majority of the review group recommended removing by August 2001 all restrictions on competition in marketing grains except those on export sales of barley, which were to be reviewed again by August 2004.

Following the collapse of the Grains Board in September 2000, which left growers preparing for harvest without a buyer, the government announced: the sale to Grainco Australia Limited of a five-year exclusive licence to act as agent for the Grains Board; the immediate removal of all restrictions on the marketing of sunflower, safflower, linseed and soybeans, and of domestic marketing restrictions for feed barley, canola and sorghum; and the sunsetting of all remaining restrictions (that is, on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola) in September 2005. The *Grain Marketing Amendment Act 2001* formalised these reforms.

In June 2003 the government reported to the National Competition Council that it could not bring forward the expiry of the remaining restrictions because they are the subject of a court-ordered Scheme of Arrangement and binding Deeds of Agreement between Grainco Australia, the Administrator of the Grains Board and the New South Wales Government.

In October 2003 Grainco Australia Limited merged with GrainCorp Limited. The combined company, also known as GrainCorp Limited, announced that it would facilitate the transition to a deregulated environment by allowing other parties to export canola and sorghum under permit for a fee of $5 per tonne. It also indicated that it would review, in consultation with the Grains Board and other stakeholders, the arrangements for domestic malting barley and export feed and malting barley for the 2004-05 harvest.

The Council found in 2003 that the public interest evidence presented by New South Wales for retaining restrictions on grain marketing until 30 September 2005 was inadequate. For a full discussion of this evidence see NCC 2003a.

Following further discussions with officials the Council accepts that the government is not in a position to meet its CPA clause 5 obligations in this area by bringing forward the expiry of remaining restrictions on grain marketing from September 2005. The Council acknowledges the initiative by GrainCorp Limited to allow competitive exporting in canola and sorghum before full deregulation.

Poultry Meat Industry Act 1986

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

In 1998 the New South Wales Government commissioned a group of grower, processor and government representatives to review the Act, but this group was unable to reach a conclusion. In 2001 the government commissioned consultants Hassall & Associates to undertake a net public benefit analysis. The government has not released this analysis, but reported a finding that the Act imposes a small net public cost equivalent to 1 per cent of the retail price of chicken meat.

In November 2001 the government announced that it would not remove the restrictions on competition because they are necessary to countervail the market power of processors. In late 2002, it amended the Act to authorise the anticompetitive conduct of the Poultry Meat Industry Committee under the *Trade Practices Act 1974*, and to allow additional pricing flexibility within limits approved by the committee.

In February 2004, following the Australian Government Treasurer's announcement of competition payments for 2003-04, the New South Wales Government introduced into Parliament the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004 which would remove the powers of the Poultry Meat Industry Committee to approve agreements and to set fees or fee formulas. Subsequently the government commissioned an independent review of the Act (to be completed later this year) and withdrew the related amendments from the Bill.

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act. The government had retained significant restrictions on competition without demonstrating that those restrictions are in the public interest.

The Council endorses the decision of the government to commission a new independent NCP review of the Act, and will look for a robust outcome from this review and consequent reforms to the Act. When these steps are completed, New South Wales will have met its CPA clause 5 obligations related to the Act.

Marketing of Primary Products Act 1983 (rice marketing)

All rice grown in New South Wales is vested in the New South Wales Rice Marketing Board (NSWRMB) by Regulations and Proclamations made under the Marketing of Primary Products Act. No-one other than the NSWRMB and its agents may market New South Wales-grown rice either domestically or on export markets. The NSWRMB delegates its marketing functions to the grower-owned Ricegrowers Co-operative Limited (RCL) under an exclusive licensing arrangement. RCL also controls the storage and processing of rice.

The government completed an NCP review of its rice marketing arrangements in November 1995. A review group composed of government and industry representatives concluded that the benefits of the export arrangements significantly exceeded the costs borne by domestic consumers and the economy. It recommended removing the NSWRMB's monopoly over domestic marketing, but retaining the export monopoly, to reduce the domestic costs while retaining export related benefits. It proposed that the state repeal its Regulations and Proclamations and that an export monopoly be established under Australian Government jurisdiction.

In 1996 the New South Wales Government extended the existing regulatory arrangements until 5 January 2004, arguing that:

- export premiums significantly exceed domestic costs
- export licensing by the Australian Government is unnecessary because most rice is produced in New South Wales
- alternative state-based arrangements are unlikely to be feasible.

In its 1997 NCP assessment and 1998 supplementary NCP assessment, the Council found that New South Wales had not implemented the recommendations of its review and, therefore, had not met its CPA clause 5 obligations in relation to domestic rice marketing arrangements.

New South Wales subsequently agreed to examine options for retaining a single export desk under Australian Government jurisdiction while removing the domestic rice market monopoly. A working party of officials from the Australian and New South Wales governments, the Council and industry representatives was formed; in January 1999, it recommended that the Australian Government establish a rice export authority to manage the single desk. Under this model, RCL would hold an automatic export right for three to five years, and third parties could obtain rice export licences where this would not diminish the benefits of the single desk.

New South Wales indicated its in-principle acceptance of the model in April 1999 and, after further development and some delay, the Australian Government began consulting other state and territory governments on the model in March 2001.

In November 2003 the New South Wales Government introduced legislation into Parliament to extend the rice vesting arrangements until 31 January 2009. The Minister for Agriculture and Fisheries stated that the Australian Government's consultations on the proposal with other state and territory governments had been abandoned and that the New South Wales Government would review the rice vesting arrangements under NCP during the period of the extension. The amendments received assent on 5 December 2003.

On 8 December 2003, the Australian Government formally confirmed to New South Wales, following the consultations, that it would not establish a single Australian rice export desk. On 15 March 2004 the New South Wales Minister for Agriculture and Fisheries wrote to the Council to confirm that the State Government would begin a new NCP review of the rice marketing arrangements, to be completed in 2004 by an independent reviewer.

The review is being conducted by Integrated Marketing Communications which anticipates providing a final report to the government in early 2005.

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations relating to this Act, because the government had not removed the domestic rice marketing monopoly as recommended by the NCP review. The Council endorses the decision of the New South Wales Government to commission a new independent NCP review of the Act, and will look for a robust outcome from this review and consequent reforms to the Act. When these steps are completed, New South Wales will have met its CPA clause 5 obligations related to the Act.

A2 Farm debt finance

Farm Debt Mediation Act 1994

Under the Farm Debt Mediation Act, New South Wales regulates the resolution of disputes that may arise between a farmer and their creditor where a farmer defaults on a secured debt and the creditor proposes to enforce the mortgage securing the debt by, for example, taking possession of the mortgaged property. The Act prohibits lenders from enforcing farm mortgages in default without first offering defaulting farmers the option of mediation. Farmers have 21 days notice in which to accept mediation. The lender must not enforce the mortgage until the New South Wales Rural Assistance Authority is satisfied that:

- satisfactory mediation has taken place, or
- the farmer has declined to mediate, or
- three months have elapsed since the lender gave notice, and the lender has attempted to mediate in good faith.

These obligations on lenders restrict competition in the market for farm debt finance by raising the costs and risks of lending to farmers. These restrictions can be expected to flow through to farmers' borrowing costs. The Act also restricts competition by providing for the accreditation of mediators.

A group composed of officials and representatives of the farming and banking industries reviewed the Act, reporting in December 2000. The review group found that negotiating solutions to farm debt disputes through, say, mediation is often less costly for both parties and fairer than court proceedings, but that farmers often do not seek voluntary mediation because they have feelings of 'relative powerlessness'. It recommended that the State Government retain mandatory mediation of farm debt disputes and accreditation of mediators. It also recommended:

- prohibiting the lender from enforcing the mortgage for 12 months where the lender, participating in mediation, is found not to have acted in good faith

- making the Rural Assistance Authority decisions on mandatory farm debt mediation subject to review by the Administrative Decisions Tribunal.

The State Government accepted the recommendations in November 2001, and amendments to the Act were passed in October 2002.

In its 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations arising from the Farm Debt Mediation Act. The state's NCP review provided insufficient evidence to support its recommendations to impose a 12-month penalty on lenders found not to have participated in mediation in good faith, and to subject related decisions by the Rural Assistance Authority to Administrative Decisions Tribunal review. The Council also questioned the adequacy of the NCP review's case for prohibiting lenders from enforcing farm mortgages in default before offering mediation.

In May 2004, following consultations with the Council, the government introduced into Parliament the National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, which would remove the 12-month penalty and administrative review provisions. Parliament passed the amendments on 24 June 2004.

Given the legislative amendments and accepting that the Act's requirement of mediation to farmers in default of the mortgage obligations does not restrict competition to a significant degree, the Council assesses that New South Wales has met its CPA obligations arising from its reform of the Farm Debt Mediation Act.

A3 Fisheries

Fisheries Management Act 1994

In the 2003 NCP assessment, the Council found that New South Wales had not met its CPA clause 5 obligations arising from the Fisheries Management Act because the State Government was yet to demonstrate the public interest in two restrictions on competition that the 2002 NCP review had identified for further evaluation: (1) fish receiver registration fees and (2) licensing for recreational charter fishing boats. Since the 2003 NCP assessment, the Government has subjected these two restrictions to an independent evaluation by the Centre for International Economics (CIE).

Fish receiver fees are paid by persons or businesses who buy fish from a commercial fisher, or by commercial fishers who sell their fish directly to the public. The Fish Receiver Program (FRP) aims to aid the conservation of fish stocks by minimising the marketing of illegally caught fish. It also ensures quality standards are met. It provides an auditable link between fish catches and the point of first sale. Fees for fish receiver licences are set on the basis of cost recovery, with about 75 per cent of costs currently recovered.

CIE found that the FRP is an integral part of the overall monitoring, surveillance and compliance system necessary to effectively manage the fish resources of New South Wales and to achieve the objectives of the Act. Similar programs operate in other jurisdictions where there are output quota restrictions or share management fisheries. By late 2004, all major commercial fisheries in New South Wales will be share management fisheries. CIE also found that the fee structure for the FRP is reasonable and justified.

There are two licence based restrictions on charter fishing: (1) a cap on the number of recreational charter fishing boats, and (2) limits on the transfer of licences by part-time fishing operators to full-time operators. The objective of these restrictions is to control fishing effort. CIE found that a limit on the number of boats is the most appropriate means of controlling overall fishing effort from the charter boat sector. Other restrictions, such as more restrictive bag limits or restraints on fishers, would be largely ineffective because ensuring compliance would be difficult. CIE found that the method of limiting boat numbers is consistent with many grandfathering methods employed in other fisheries and other industries.

The small number of non-transferable licences was introduced as a transitional measure to cater for part-time operators who would not otherwise qualify for a full transferable licence. If the non-transferable licences were to be made transferable, fishing effort would potentially increase on a permanent basis. CIE found that the sunsetting of non-transferable licences is a reasonable way of catering for those who have a history of part-time operations but who otherwise would not qualify for a full transferable licence.

The Council assesses that New South Wales has met its CPA clause 5 obligations arising from the Fisheries Management Act.

A5 Agricultural and veterinary chemicals

Agriculture and Veterinary Chemicals (New South Wales) Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary chemicals, which covers the evaluation, registration, handling and control of these chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The Agriculture and Veterinary Chemicals (New South Wales) Act is the relevant legislation for New South Wales.

The Australian Government Acts were subject to a national review (see Chapter 19). Because the Australian Government has not completed reform of the national code, the reform of state and territory legislation that automatically adopts the code has not been completed and the Council thus assesses that New South Wales has not met its CPA obligations in relation to this legislation.

Stock Medicines Act 1989

Beyond the point of sale, agricultural and veterinary chemicals are regulated by 'control of use' legislation. This legislation typically covers the licensing of chemical spraying contractors, aerial spraying and chemical uses other than those for which a product is registered (that is, off-label uses).

A national review examined control of use legislation for agricultural and veterinary chemicals in Victoria, Queensland, Western Australia and Tasmania. New South Wales (along with South Australia and the Northern Territory) conducted its own review of control of use legislation. The only significant outstanding matter for New South Wales concerns advertising restrictions in the Stock Medicines Act. New South Wales reported that it will repeal these restrictions but this is yet to occur. Amending legislation was introduced to Parliament on 14 September 2004 and passed the lower house two days later.

The Council assesses that New South Wales has not met its CPA obligations in relation to this legislation because it has not completed its reforms.

A6 Food

Food Act 1989

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. In November 2000, CoAG signed an Intergovernmental Food Regulation Agreement. Under the agreement, the states and territories undertook to make their food legislation consistent with the core provisions of the model food Act within 12 months. The core provisions relate mainly to food handling offences and to the adoption of the Food Standards Code. Adoption of the noncore provisions is voluntary. States and territories may also retain provisions in their legislation that are not in conflict with the enacted provisions of the model food Act. New South Wales passed new legislation (the *Food Act 2003*) in September 2003. The Act contains all core provisions of the model food Act that relate primarily to food handling offences and the application of the Food Standards Code in New South Wales.

The Council assesses New South Wales as having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1986

New South Wales licenses veterinary surgeons and regulates the practice of veterinary surgery in the Veterinary Surgeons Act. The review of the Act determined that the regulation of veterinary practice through a system of registration is in the public interest because it ensures that only trained persons can undertake surgical and other high risk health care procedures on animals and that consumers are well informed about the competencies required of animal health service providers.

The review recommended several reforms of the Act to maximise the net public benefits arising from the regulation of veterinary practice. In December 2003 Parliament passed the Veterinary Practice Bill 2003 to implement these reforms. Section 14 of the new Act responds to the recommendation to ease restrictions on vet practice ownership. The new Act deregulates ownership to the extent that any form of business arrangement may own a veterinary practice, so long as one or more veterinary surgeons hold the majority ownership. The rationale for retaining this restriction is that persons with a controlling interest are accountable under the Act. Section 14(5)(a) provides an exemption for agribusinesses by permitting them to provide veterinary clinical services but not veterinary hospital services.

Although the Bill was assented to on 5 December 2003, s14(5)(a) does not take effect for at least 12 months from this date. New South Wales has thus retained an ownership restriction and deferred making operative a section of the Act that would lessen the impact of this restriction. The Council notes that other jurisdictions have deregulated ownership and taken alternative approaches to ensure professional standards are maintained (such as making it an offence for a person to direct a veterinarian to practise in an unprofessional manner).

The Council thus assesses that New South Wales has not met its CPA obligations in this area.

A9 Mining

Mines Inspection Act 1901

The New South Wales Government released a position paper in October 2002 on the reform of legislation governing safety in metalliferous mines and quarries. Reforms proposed in the position paper accounted for competition issues raised in the 2001 NCP review of the Mines Inspection Act. The proposed reforms are similar to those for coal mines, aiming to ensure the particular hazards of metalliferous mine and quarry operation are appropriately managed at each site. In May 2004 the government introduced a draft Mine Health and Safety Bill (based on the position paper) to repeal and replace the Mines Inspection Act, and Parliament passed the Bill in September 2004.

The Council thus assesses that New South Wales has met its CPA obligations in relation to the Mines Inspection Act.

B1 Taxis and hire cars

Passenger Transport Act 1990 (taxis)

The Passenger Transport Act in New South Wales gives the Director-General of the Ministry of Transport the discretion to grant (or not grant) an application for a new taxi licence at the market value (currently around $220 000). In 2003, New South Wales reported that no new applications for perpetual licences had been received in recent years.

The Independent Pricing and Regulatory Tribunal (IPART) completed the NCP review of the Act in November 1999. The review report concluded that 'restricting the number of taxi and hire car licences does not appear to generate any significant benefits for passengers, drivers, or anyone working in the industries other than the licence owners' (IPART 1999, 'Foreword'). It

also concluded that taxi and hire car restrictions are not in the public interest. It recommended immediately freeing licence restrictions in the hire car sector, annually increasing the number of taxi licences by 5 per cent between 2000 and 2005 (that is, approximately 300 new taxis per year), and conducting a further review in 2003.

The government did not respond to these recommendations, instead issuing 60 six-year taxi licences and 120 wheelchair-accessible taxi licences (a small increase on the almost 6000 taxis in New South Wales).

In the 2003 NCP assessment, the Council noted that New South Wales had not introduced taxi reforms as recommended by the IPART review in 1999 but that the government foreshadowed asking IPART in June 2003 to model options for taxi and hire car reform. New South Wales informed the Council in 2003 that perpetual taxi plates are issued at market value on application although no applications had been received in recent years.

The Council noted that the only remaining restriction in the hire car market is an annual fee of $8235. Although this fee had been reduced from the previous annual rate of $16 100, the Council considered that it still represents a significant deterrent to new hire car businesses.

The Council concluded in 2003 that New South Wales had not met its CPA obligations to review and reform taxi and hire car legislation.

Since the 2003 NCP assessment, the New South Wales Government has not implemented any substantive reforms. It is not surprising, therefore, that the Transport Services Minister requested the Taxi Advisory Council (which comprises representatives of the Taxi Council, the Country Taxi Association, the Transport Workers Union and the Ministry of Transport) to attend a meeting on 16 December 2003 to discuss poor taxi outcomes, in terms of taxi availability, service levels, waiting times, driver shortages and a booking system that allows drivers to reject short trips.

The government has, however, made some incremental changes — but these do not address availability or service quality. These changes include:

- an adjustment package that allows holders of perpetual hire car licences to surrender them for an equity in taxi plates. The government expects approximately 300 hire car plates to be converted to taxi plates over the 12 months to the end of 2004.

- the introduction of measures such that taxi drivers who use trunk radios will incur fines of $1100. Many taxi drivers had been using these radios to share jobs involving passengers who had phoned them directly rather than through radio networks.

- a twelve-month trial of an arrangement under which taxi drivers who take radio bookings will not learn the destination until the passenger is in the taxi.

The government commissioned a review of service standards in May 2004. The interim review report was released in September 2004, recommending that the government allow trunk radios and cease the 'no destination' trial.

In its 2004 NCP annual report to the Council, New South Wales offered to undertake another independent review of the Passenger Transport Act if requested by the Council. New South Wales contended that the 1999 IPART review had erred by assuming there was a quantitative barrier to entry to the taxi sector. New South Wales noted that it does not impose any restriction on the number of taxi licences, because the Ministry of Transport makes new plates available on demand at market prices. New South Wales provided data to the Council in September 2004 that indicated that 45 perpetual licences had been issued in 2000, 107 in 2001, 13 in 2002 and 77 in 2003 (67 of which arose from surrendered hire car licences). (These data appear to contradict New South Wales' 2003 information that no applications for perpetual licences had been received in recent years.) In addition, 200–300 short term and wheelchair accessible taxi licences were issued in each of these years.

The New South Wales Government has not introduced the reforms as recommended by the NCP review, although the number of new entrants to the taxi industry has been quite significant in recent years (around 6 per cent in 2000, 7 per cent in 2001, 3 per cent in 2002 and 5 per cent in 2003). Even if the IPART review had erred, the government could still have offered the recommended 5 per cent increases each year via an auction. This approach would have allowed the market to reflect licence values based on the knowledge that a reform program had commenced. However, given the government's concerns about the IPART review, the Council considers that another independent review of this legislation would have merit. Such a review should thoroughly address the extent to which New South Wales' regulatory arrangements for taxis constitute a restriction on competition and the nature of any remedying reform package.[1] As such, the Council considers New South Wales' review and reform activity to be incomplete.

B2 Tow trucks

Tow Truck Industry Act 1998

The Tow Truck Industry Act requires tow truck operators to be licensed by the Tow Truck Authority. The New South Wales Government commenced a six-month trial of a job allocation scheme for tow trucks on 20 January 2003 and committed to review the Act six months after the scheme began. The review was not finalised when the Council finished the 2003 NCP assessment

[1] The review should also assess the new restrictions imposed in 2004 to stamp out innovations such as informal networks using trunk radios.

and it concluded that New South Wales had not completed its review and reform activity in this area.

The review was completed in March 2004 and considered the competition impacts of the Act. It concluded that tow truck licensing arrangements in New South Wales represent a low barrier to entry (for tow truck operators in metropolitan areas, application and registration fees total $1060 and drivers' annual fees are $152) and provide a net public benefit. The review also considered clause 69(2) of the Tow Truck Industry Regulation 1999 which permits a tow truck operator licensed in another state to tow a damaged vehicle from that state into New South Wales, but does not allow an operator licensed interstate to collect a vehicle in New South Wales and tow it to another state unless the operator also has a New South Wales licence. The Minister for Transport Services has approved amendments to the regulations so interstate operators no longer need a New South Wales licence for towing vehicles from New South Wales to other states. However, these amendments have not yet been implemented.

The Council considers that New South Wales has not met its CPA clause 5 obligations in relation to tow trucks legislation because the amendments to clause 69(2) have not been introduced.

B6 Ports and sea freight

Marine Safety Act 1998

New South Wales repealed several pieces of shipping legislation, consolidating their provisions in the Marine Safety Act. Before conducting a review of the Act, New South Wales initially awaited advice from the Australian Government on its review of the Uniform Shipping Laws Code, which provides for common national safety standards for commercial vessels. However, New South Wales learnt that the Australian Government's review would not be completed for some time. It thus proceeded with its review of the Marine Safety Act and decided that provisions and associated Regulations dealing with recreational vessels (which comprise most of the Act) would commence in the second half of 2004.

In its 2003 NCP assessment, the Council found that review and reform activity was incomplete because the NCP review of the Marine Safety Act had not been completed. The review was finalised in March 2004. The Act's restrictions on competition are mainly associated with the requirement to hold licences, registrations, certificates and other approvals connected with the operation of sea vehicles. The review recommended that these 'marine safety licences' be retained because the benefits to the community (especially safety benefits) outweigh the costs, the licences do not serve as significant barriers to being a vessel master or crew member, and mutual recognition protocols apply to registration, survey and competency certificates.

While New South Wales has not completed its reform of the Marine Safety Act, the NCP review found that the Act's restrictions have a net public benefit. The Council thus considers that New South Wales has met its CPA clause 5 obligations in this area.

C1 Health professions

Dentists Act 1989
Dental Practice Act 2001

Following a review of the Dentists Act, the Dental Practice Act was enacted and implemented review recommendations, with the exception of retaining ownership and employment restrictions. New South Wales argued that the Dental Practice Act, by allowing for exemptions from these restrictions on a case-by-case basis, gave effect to the spirit of the review. In the 2003 NCP assessment, the Council considered that the exemption process created a barrier to entry and that the state had not adequately considered less restrictive methods to achieve the objective of the legislation (that is, to protect the health and safety of members of the public). It thus assessed New South Wales as failing to meet its review and reform obligations in this area.

Subsequently, the passage of the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 removed these restrictions.

The Council thus assesses New South Wales as having complied with its CPA clause 5 obligations in this area.

Dental Technicians Registration Act 1975

The Dental Technicians Registration Act requires dental technicians to be registered with the Dental Technicians Registration Board to carry out technical work. It also prohibits non-dental technicians from carrying on technical work, except in certain circumstances.

In the 2003 NCP assessment, the Council did not explicitly consider the Dental Technicians Registration Act because it understood that the state had reviewed the regulation of dental technicians in conjunction with the broader review of the Dentists Act. However, New South Wales subsequently advised that a review of dental technician regulation was undertaken as part of the Commonwealth–State review of partially regulated occupations. This review recommended the repeal of the registration provisions. The New South Wales Government considered the review's findings in 1995 and rejected the recommendation on public health and safety grounds.

The Council considers that this Act restricts competition because it appears to preclude non-dental technicians from undertaking such activities. This

preclusion may disadvantage providers of technical dental work in New South Wales compared with those in less regulated jurisdictions. Most other jurisdictions either do not regulate the activity of dental technicians or do not prescribe limitations on the performance of technical work.

New South Wales has provided the Council with a regulation impact statement (RIS) prepared for the Dental Technicians Registration Regulation 2003. However, the Council does not consider the RIS for the subordinate regulation to represent a robust public interest case for the restriction in the primary Act itself. Further, the RIS only contains some limited analysis of the benefits of infection control. In particular, it not clear why employers of persons engaged in dental work, such as dental laboratories, are unable to manage infection control given that they may be liable for the negligent actions of their employees. The RIS also only considers the regulation's costs in terms of the incremental impact of amending the regulations to meet the objectives of the Act, rather than considering the costs of the restriction itself.

The Council accepts that there may be some public interest arguments for regulating dental technicians in light of the potential health risks. However, in the absence of a robust public interest case for retaining the restriction in the enabling legislation, it is not clear that risks to the public are significant.

The Council thus assesses that New South Wales does not comply with its CPA clause 5 obligations in relation to this profession, because it has not provided a public interest case for rejecting the review's recommendations.

Nurses Act 1991

The review of the Nurses Act recommended, among other things, removing minimum age requirements for nurses and revising practice restrictions relating to childbirth. In the 2003 NCP assessment, the Council considered that the review recommendations were consistent with compliance with CPA clause 5. However, the Council assessed the state's progress in reforming nursing legislation as being incomplete, given that Parliament had not passed the Nurses Amendment Bill 2003, which incorporated review recommendations.

The *Nurses Amendment Act 2003* has now been passed. The Council thus assesses New South Wales as having met its CPA obligations in relation to nurses legislation.

Optical Dispensers Act 1963
Optometrists Act 1930
Optometrists Act 2002

Following a review of the Optometrists Act 1930, New South Wales enacted the Optometrists Act 2002, which implemented review recommendations, with the exception of removing ownership restrictions. New South Wales argued that removing ownership restrictions would result in a progressive

concentration of optometry ownership and that competition might marginally improve in some areas but would diminish in other areas. In the 2003 NCP assessment, the Council did not consider that these arguments provided a convincing public interest case for retaining the ownership restrictions. It therefore assessed New South Wales as failing to meet its review and reform obligations in this area.

However, the passage of the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 removes these restrictions.

The Council therefore assesses that New South Wales has met its CPA clause 5 obligations in relation to optometry legislation.

Pharmacy Act 1964

Council of Australian Governments (CoAG) national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own, and allow friendly societies to operate in the same way as other pharmacists (see chapter 19). Compliance with these requirements requires New South Wales to remove these restrictions from the Pharmacy Act.

On 17 February 2004 the New South Wales Government introduced the omnibus National Competition Policy Amendments (Commonwealth Financial Penalties) Bill 2004, which included these reforms to pharmacy regulation as part of a suite of competition policy reforms. These amendments to pharmacy regulation, if passed, would have been consistent with CoAG requirements, and the state would have met its review and reform obligations in this area.

The Bill was withdrawn on 4 May 2004. The pharmacy related amendments were then included in the subsequent National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill 2004 — an omnibus health Bill.

On 5 May 2004, the Prime Minister advised New South Wales that it would not attract a competition payment penalty if it amended its legislation to:

- increase from three to five the maximum number of pharmacies that may be owned by an individual pharmacist
- permit friendly societies to own and operate up to six pharmacies (Howard 2004a).

These reforms fall short of those required by CoAG national review processes. While the number of pharmacies that a pharmacist can own under the Act would increase from three to five, CoAG outcomes require that such restrictions be removed. In addition, the proposed amendments would not address disparities between the treatment of friendly society and community

pharmacies. They also increase restrictions on competition, rather than removing them, by restricting friendly societies to owning six pharmacies. Previously, no such restriction applied.

Nonetheless, New South Wales subsequently amended its omnibus health bill to replace CoAG compliant provisions with provisions consistent with the Prime Minister's statement. Pursuant to these changes, Parliament passed the National Competition Policy Health and Other Amendments (Commonwealth Financial Penalties) Bill, with assent on 6 June 2004.

The Council acknowledges that it is the responsibility of the Australian Government to determine the level of competition payments payable to each jurisdiction. However, under the CPA, the Council is obliged to monitor and assess jurisdictional progress in implementing the recommendations of reviews that meet CoAG requirements for rigour and transparency. The national review of pharmacy regulation meets these standards.

Given that New South Wales has not implemented reforms to pharmacy regulation consistent with CoAG requirements, the Council assesses that the state has failed to meet its CPA obligations in relation to pharmacy legislation.

Podiatrists Act 1989

The Council understands that the key recommendation of the Podiatrists Act review was to replace the whole-of-practice restrictions on podiatry with core practice restrictions, restricting certain foot treatments to podiatrists, nurses and medical practitioners. The New South Wales Government introduced an exposure draft of the Podiatrists Bill to Parliament in 2003 that broadly incorporated review recommendations on practice restrictions and would repeal the Podiatrists Act. In the 2003 NCP assessment, the Council considered the reforms were consistent with the CPA guiding principle, but assessed the state's progress in this area as being incomplete because the legislation had not been implemented.

Following the passage of the *Podiatrists Act 2003,* the Council assesses that New South Wales has met its CPA obligations in relation to podiatry regulation.

D Legal Services

Legal Profession Act 1987

New South Wales has been progressively implementing reforms arising out of the review of its Legal Profession Act. The state expects to introduce further legislation in 2004 to implement the outcomes of the national Model Laws Project.

The state's outstanding legal profession reform obligation — from a competition policy perspective — relates to professional indemnity insurance. The state has indicated it will examine this issue as part of the Model Laws Project, which is developing minimum national standards for professional indemnity insurance. Chapter 19 contains further information on national processes.

The Council assesses that New South Wales has not yet met its CPA clause 5 obligations in relation to the review and reform of its legal profession.

E Other professions

Wool, Hide and Skin Dealers Act 1935

The issues paper for the review of the Wool, Hide and Skin Dealers Act recommended repeal of licensing. The final report (completed in June 2002), however, recommended retaining the licensing requirement because it provides a low cost and effective deterrent to crime with secondary benefits in disease control. The review also recommended narrowing the Act to cover only sheep and cattle, removing the nominal licence fee ($10) and renewing licences on a three-year (rather than annual) basis. It considered these changes would help to reduce the cost of regulation.

These recommendations were supported by the Pastoral and Agricultural Crime Working Party review, which found that stock stealing continues to be a major crime in New South Wales and has increased in recent years in response to the rising value of cattle and the exhaustion of wool stockpiles. It also found that wool, hides and skins can easily be stolen and on-sold because they lack identifiers. The working party recommended retaining the licensing regime as the most effective means of tracking and investigating trade, but modifying it based on the pawnbroker licensing provisions (given the similar risk relating to trade in stolen property). The government accepted the review recommendations and Parliament passed amending legislation in March 2004.

The Council thus assesses New South Wales as having complied with its CPA obligations in this area.

Travel Agents Act 1986

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The findings of the review and the working party response are outlined in chapter 19.

New South Wales is progressing towards the implementation of reforms but the completion of reform activity has been delayed by the need to finalise a number of issues at the national level, including the review of contribution arrangements to the Travel Compensation Fund and its prudential and reporting requirements and the review of qualification requirements to ensure uniformity across jurisdictions.

Because reform is incomplete, the Council assesses New South Wales as not having met its CPA obligations in relation to travel agents regulation.

Shops and Industries Act 1962 (hairdressers)

In 2000 the Department of Industrial Relations commenced a review of part 6 of the Shops and Industries Act (formerly known as the *Factories, Shops and Industries Act 1962)*, which regulates hairdressers. Provisions of the Act dealing with hairdressers established a licensing scheme that ensures all hairdressers are appropriately qualified to practise in the trade. The Act also prescribed TAFE as the sole provider of hairdressing training in New South Wales. The review recommended that these restrictions be removed, but that legislation continue to prevent unqualified people from hairdressing by specifying the qualifications required to act as a hairdresser for a fee. Amending legislation to implement the review recommendations received assent on 6 November 2003.

The Council thus assess New South Wales as complying with its CPA obligations in relation to hairdressers regulation.

Commercial Agents and Private Inquiry Agents Act 1963

New South Wales regulates the private investigation and debt collection industry under the Commercial Agents and Private Inquiry Agents Act. The government established a working party in late 1997, which recommended replacing the Act with new legislation, adopting a business licensing (rather than an occupational licensing) approach, and removing licensing requirements for repossession agents and process servers.

New South Wales completed an NCP review of the Act in April 2002, which found that the Act provides a net public benefit by reducing costs to clients and reducing the risk of criminal activity or harm to the public. It also found that regulatory objectives may be achieved only through a licensing system. The review recommended removing the following restrictions, which could not be justified in the public interest: the requirement for licensees to be in charge of a business; the distinctions between commercial agent and private inquiry agent licences; and certain compliance requirements for licence holders. The Commercial Agents and Private Inquiry Agents Bill, which implements review recommendations, was introduced to Parliament in June 2004 and passed on 21 September 2004.

The Council thus assesses that New South Wales has met its CPA clause 5 obligations in relation to commercial agents and private inquiry agents.

F1 Workers' compensation insurance

Workers Compensation Act 1987

Under the Workers Compensation Act, workers compensation insurance is underwritten by the WorkCover Authority of NSW. In 2001 the New South Wales Government decided not to proceed with previously legislated, but non-implemented, competitive private underwriting of workers compensation insurance. Against the background of a large and rising WorkCover Authority debt, New South Wales commissioned a further review by McKinsey & Co. The review report recommended that private underwriting of the scheme should not be pursued until it is fully funded, and that core functions such as claims and asset management should be opened to tender (McKinsey & Company 2003). The government introduced the Workers Compensation (Insurance Reform) Bill in mid-November 2003 to give effect to the recommendations of the McKinsey & Co report. This legislation was enacted later the same month.

For reasons outlined in chapter 9, the Council has not assessed New South Wales' compliance with its CPA obligations in this area for the 2004 NCP assessment.

G2 Liquor licensing

Liquor Act 1982
Registered Clubs Act 1976

New South Wales completed its review of the Liquor Act and the Registered Clubs Act in October 2003. The review report was released in 2004 following the government's response to a summit on alcohol abuse conducted in August 2003. The review identified the following restrictions on competition:

- *The requirement to hold a licence*. The review concluded that the benefits to the community of some form of licensing outweigh the costs and that any new licensing system should focus more clearly on the harm minimisation, local amenity and probity matters. The review discussion paper noted that the issues required to be considered in the social impact assessment of applications for an increase in gaming machine numbers were 'consistent with the local amenity interests that could be considered in a process for granting a liquor licence and imposing conditions on a licence' (New South Wales Department of Racing and Gaming 2002, p. 35).

- *Restrictions on the removal of a licence, once granted, to another location.* The substantial difficulties and costs associated with moving a licence (or the prohibition on removal for some licence types) create 'an obvious barrier to entry'. (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The 'needs test' that allows any person who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public.* The review noted that 'the majority of 'needs' objections are made by existing or potential business operators who understandably have a desire to limit competition' (New South Wales Department of Racing and Gaming 2003, p. 23).

- *The highly prescriptive and complex nature of the licence application process.* This can result in applicants incurring significant legal costs and also in lengthy application periods during which an opportunity cost may be incurred. The review recommended that the licence application process should be dealt with 'administratively wherever practicable.' (New South Wales Department of Racing and Gaming 2003, p. 49). Under this approach, the Liquor Administration Board would determine licence applications and the Licensing Court would be responsible for hearing appeals in respect of administrative decisions relating to the grant of applications, and disciplinary proceedings against licensees.

- *The high fees charged on grant of a new licence.* New licence fees are based on factors such as the size and location of the business and the fees paid by other licence holders in the area. The review's discussion paper (New South Wales Department of Racing and Gaming 2002, p. 10) noted that in 1998-99, the fee for a new hotel licence varied from $25 000 (in regional New South Wales) to $175 000 (in Sydney). The fee for a new off-licence ranged from $2500 (in regional New South Wales) to $60 000 (in Sydney). Existing licences changed hands at similar prices. No annual or periodic licence fee or charge is imposed. The review's preferred option was the payment of an application fee, along with an annual administration fee. It considered that these fees should not act as a barrier to entry, with the application fee intended to cover the cost to the government of processing an application, and with the annual fee set at a reasonable level to cover the cost of maintaining and administering the liquor licensing system, and the costs associated with the increased demands on public services.

- *The number of licence categories and the conditions attaching to each category*. The review found instances where these conditions reduce the ability of licensed premises to respond to changing industry demands. It suggested:

  – reducing the number of licence categories from 21 to seven

  – removing the requirement that a restaurant serve liquor only with meals unless the restaurant holds a dine-or-drink authority. It found this condition unduly restrictive and noted that the high cost of a dine-or-drink authority prevents many restaurateurs from operating in a

more flexible way. The condition's removal should be balanced with requirements that restaurants operate primarily as dining venues.

- requiring the primary activity of a business licensed to sell packaged liquor to be the sale and supply of liquor

- deeming some types of venue (convenience stores, milk bars, service stations) unsuitable for selling packaged liquor, but noting a possible ongoing need for such multipurpose venues in certain remote and regional areas of New South Wales (New South Wales Department of Racing and Gaming 2003, p. 46).

- *Restrictions on opening hours*, which the review acknowledged as beneficial in promoting harm minimisation and local amenity.

In February 2004 the government introduced amendments that remove the needs test and substitute a social impact assessment (SIA) process with two levels — SIA (A) and SIA (B) — for licence applications. SIA (A) applies where a licence is being removed within 500 metres in a metropolitan area or 5 kilometres within a regional area, where trading hours are not being extended; licence conditions are not being varied; and the total area of the proposed premises does not exceed the area of existing premises by more than 10 per cent. SIA (B) applies to all other applications.

The regulations that govern the SIA process for a new hotel or off-licence require the applicant to pay a fee of $6600 and to provide an extensive set of information to the Liquor Administration Board, including

- an extensive demographic profile of the local community, including such variables as the number of households in rented accommodation and the number of persons living in the area who work as labourers or in related occupations, and the numbers of persons aged 15 or over who do not hold tertiary or trade qualifications

- the number of licensed premises and the trading hours for those premises

- social health indicators, including the rates and general trend in alcohol related hospital admissions, the number of emergency accommodation services in the area, the number of drug and alcohol counselling services operating in the area, the number of domestic violence services and refuges operating in the area, and the capacity of these services to meet demand

- the impact on noise, parking and traffic levels and on the amenity of the local community (including the potential for increased littering, vandalism and public drunkenness).

Copies of SIA applications must be forwarded to various groups prescribed in legislation (for example, the police, community groups representing people of non-English speaking backgrounds etc.). If the proposed premises are adjacent to more than one local area, the study may need to be replicated.

Approval of the SIA by the Liquor Administration Board is expected to take between two and six months, or longer if a party dissatisfied with the board's decision exercises their right of appeal to the Appeals Board and the New South Wales Supreme Court. The SIA is in addition to the previous licence application process, and successful completion of the SIA is a prerequisite to lodging a licence application to the Licensing Court.

The amendments remove the Liquor Administration Board's power to fix licence fees for the grant of hotel and off-licences which will henceforth be prescribed in the Act's regulations and will be set initially at $2000. They also introduce annual fees for hotel and off-licences to be set initially at $2500. Finally, the amendments introduce a prohibition on service stations selling packaged liquor and extend the restriction on granting an off-licence to a convenience store to similar stores such as mixed businesses, corner shops and milk bars.

The government's amendments commenced operation from 1 August 2004 and it is therefore difficult for the Council to assess their impact on competition. In its previous NCP assessments, the Council supported the removal of the needs tests for new licences and their replacement with a more broadly based assessment of potential harm. The Council welcomes the New South Wales Government's action to remove the most important restriction in its legislation, but notes that New South Wales has introduced a licence application procedure that appears to be significantly more complex, protracted and costly than that of other jurisdictions. The licence application procedure proposed by New South Wales adds considerable paperwork, six months or more of processing time, increased uncertainty and a higher cost to a licence application process that the review had already found to be time consuming and expensive. A liquor store owner wishing to move an outlet more than 500 metres (even within the same shopping centre) and/or wishing to expand the outlet's size by more than 10 per cent is required to go through the SIA(B) process. The Council has been informed by industry participants that they estimate the cost of preparing an SIA (B) may be upwards of $50 000 on top of existing Court and legal costs of approximately $60 000. The high costs of a licence application are likely to be a major deterrent to small businesses seeking to enter packaged liquor retailing.

All other jurisdictions have adopted administrative approaches to the grant of liquor licences. Typically, a licensing board determines applications having regard to potential harm via consideration of local government and police evidence. All jurisdictions have licence fees below those introduced by New South Wales — for example, a packaged liquor licence has an application fee of $515 in Victoria and $1444 in the ACT. In correspondence with the Council, New South Wales maintains that there is significant degree of similarity between its SIA process and the NCP compliant Queensland public interest test. However, the New South Wales process appears likely to be more time consuming, imposes more onerous information requirements and has higher fees and legal costs than its Queensland counterpart.

The prohibition on licensing of service stations was canvassed in the review discussion paper which, as noted previously, considered that some provision

for the sale of packaged liquor might be necessary in remote areas. In its annual NCP report to the Council, New South Wales supported the ban with evidence put to the Summit on alcohol abuse, including evidence that one-third of all driver and pedestrian deaths are alcohol related. The government considers that there is a strong public interest in disassociating liquor availability from driving and, therefore, minimising the risks associated with drink driving. Although the Summit on alcohol abuse was not an NCP review, the Council accepts the New South Wales Government concerns regarding drink driving.

Although it has introduced a complex licence application process, New South Wales has not acted on several issues raised in the review discussion paper, including issues relating to the simplification of licence categories and the service of alcohol in restaurants. The government has announced that further amendments to the liquor laws are planned for 2005, to implement some initiatives arising from the NCP review. It envisages that the amendments will:

- reduce cost and complexity for licence applicants, while providing a simple avenue for people to raise concerns about applications without the need for legalistic objections

- simplify the liquor laws, including reducing the number of licence categories.

In addition, the government will evaluate the operation of the SIA process in 2005–06 with a view to extending it to other types of liquor licences.

New South Wales has removed its needs test and replaced it with an application process which, while it no longer allows objections on competition grounds, imposes a complex procedure upon licence applicants. It has also replaced the high fee charged upon the grant of a new licence with an annual fee, albeit at a level higher than that charged by other jurisdictions. It is too early to assess the impact these changes will have on competition, and assessment is complicated by the fact that some lesser reforms are yet to be implemented.

The Council thus assesses that New South Wales as having met its CPA obligations in relation to liquor licensing for 2004. However, the Council will revisit the issue in its 2005 NCP assessment when it anticipates that a clearer picture of the competition impacts of New South Wales reforms should be apparent.

H1 Fair trading legislation

Funeral Funds Act 1979

The review of the Funeral Funds Act was released in April 2002. It found that the impact of the legislation on competition was not significant. The review established a net public benefit case for retaining key consumer protections such as ensuring industry participants are of fit character and clarifying consumer rights in pre-paid contracts. Proposed new legislation would remove restrictions on funeral directors where these are not justified on public benefit grounds. These restrictions cover:

- the minimum and maximum numbers of fund directors and trustees
- the nomenclature of funeral funds
- a cap on management fees and benefits paid.

Reform was delayed until the position of funeral expense policies under Australian Government financial services reforms could be clarified. The Funeral Services Amendment Bill 2003, incorporating the recommended reforms, was passed by the New South Wales Parliament on 9 March 2004.

The Council thus assesses New South Wales as having met its CPA clause 5 obligations in this area.

H3 Trade measurement

Trade Measurement Act 1989
Trade Measurement Administration Act 1989

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and Territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

New South Wales is pursuing completion of the national response which will enable it to implement reforms to its Trade Measurement Acts.

The Council thus assesses News South Wales as not having met its CPA clause 5 obligations in this area because it has not completed reforms.

I2 Child care

Children (Care and Protection) Act 1987
Children and Young Persons (Care and Protection) Act 1998

New South Wales is planning to replace the Children (Care and Protection) Act, which regulates commercial child care services, with a Regulation in the Children and Young Persons (Care and Protection) Act. The Regulation will include provisions for the licensing of children's services, information for parents, child numbers, staffing standards, facility standards and administrative procedures and policies. A regulatory impact statement found that the restrictions on competition (primarily licensing and standards setting) are in the public interest. New South Wales sought public feedback on the regulatory impact statement before implementing new legislation which commenced on 30 September 2004.

The Council assesses that New South Wales has met its CPA obligations in this area.

I3 Gambling

NSW Lotteries Corporatisation Act 1996
Public Lotteries Act 1996

In New South Wales, the Public Lotteries Act[2] governs lotteries and other games such as lotto and soccer pools. This Act provides for the licensing of operators of commercial lotteries and for the regulation of such games. When NSW Lotteries was corporatised under the NSW Lotteries Corporatisation Act, it was granted an exclusive licence to conduct seven lottery games until 2007, after which the licences become contestable. New South Wales conducted statutory five-year reviews of these Acts.

The reviews recognised the potential costs arising out of exclusivity arrangements (such as limits on the ability of the Government to transfer a licence to another party), but recommended retaining the exclusive licence until the legislated expiry date. They considered that repealing the provisions before this date would have a net public cost. The reviews also found that NSW Lotteries has made long term decisions based on the exclusive period specified in the licences, and that to reduce the exclusivity period might undermine the corporation's financial viability. Further, the reviews noted that no other jurisdiction appears likely to make their licences contestable before this date, so lifting the restrictions would be a significant competitive

[2] The Public Lotteries Act replaces the *Lotto Act 1979,* the *NSW Lotteries Act 1990* and the *Soccer Football Pools Act 1975.*

disadvantage to New South Wales and result in a transfer of lottery activity and revenue to other states.

The review reports were tabled in Parliament in December 2002 and have been endorsed by the New South Wales Government. No legislative change is necessary.

The Council thus assesses New South Wales as having met its CPA obligations in relation to lotteries legislation.

Casino Control Act 1992

In 1998, the New South Wales Treasury reviewed the Casino Control Act which grants an exclusive casino licence for Star City Casino. The review recommended retaining the exclusive licence, noting that the tender process, the upfront fee and the special casino taxation regime minimise the anticompetitive effects of the licence. The review report also highlighted the increased ease of monitoring for illegal activity, promoting and monitoring product integrity, and managing social problems if there is only one venue. The government signalled its support for these conclusions, but asked the Treasury to consider further material in developing the review recommendations. A revised report was completed in March 2003.

The revised report reached broadly the same conclusions as those of the first report. It acknowledged that licence exclusivity may not be consistent with NCP principles. However, it found no feasible or less restrictive option for casino gambling at this time, given the nature of the exclusivity agreement with the single licence holder and the liability for substantial compensation from terminating the agreement. Additionally, the revised report found that the exclusive licence arrangement is a reasonable approach to the gradual liberalisation of the gaming market in an environment of community apprehension about the possible social costs. While noting that the monopoly profits of the venture are shared with the New South Wales public via a progressive taxation regime, the revised report acknowledged that the establishment of exclusivity arrangements to maximise taxation revenue is not a sound basis for the restriction.

The revised report recommended that the government consider the case for liberalising the casino gaming market as the 2007 exclusivity expiry date approaches. Specifically, it recommended that consideration be given to providing no new exclusive casino licences, not renewing existing exclusive licences on expiry, and removing any legislative barriers to new entry into the casino gaming market. The government endorsed the review's recommendations and released the report in October 2003. No legislative change is necessary.

The Council thus assesses New South Wales as having met its CPA obligations relating to casino regulation.

Gaming Machines Act 2001

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* originally regulated gaming machine activity. A joint review of these Acts commenced in 1999 but was not completed. In 2001, the Government implemented changes to gaming machine regulation (including a freeze on the number of machines in hotels and clubs) via the Gaming Machines Act, which took over the gaming regulation sections of the Liquor Act and the Registered Clubs Act. The Act caps machine numbers, both in total (104 000) and by venue type (450 for clubs and 30 for hotels), establishes markets for existing licences, limits operating hours for gaming machines, restricts advertising and introduces other harm minimisation measures. The Department of Racing and Gaming completed a review of the Gaming Machines Act in March 2003 and released the review report in June 2003. The review found a net public benefit arising from the harm minimisation measures contained in the Act. The review also found that a restriction on the transferability of licences from nonmetropolitan to metropolitan New South Wales is important in maintaining social cohesion in rural areas.

The harm minimisation reforms (such as the requirement for clubs and the casino to establish links with problem gambling counselling services, restrictions on advertising and restrictions on hours of opening) fall within the range of those measures endorsed by the Productivity Commission and CoAG, thus meeting the CPA clause 5 guiding principle (see chapter 9).

The Council has previously expressed concern regarding the Gaming Machines Act's granting of TAB Limited's exclusive investment licence. While TAB Limited competes with other commercial operators and financial institutions in the supply and finance of gaming machines, it is the only entity that can enter into profit sharing arrangements with hotels as part of the terms of supply. In its 2003 NCP assessment, the Council found that the activities of TAB Limited under the terms of the investment licence provide more options in the supply of gaming machines, but that greater competition would result if other suppliers who meet probity requirements were allowed to carry out similar functions. The Council considered that New South Wales did not establish a public benefit case for exclusivity.

New South Wales contends that TAB Limited does not receive a competitive advantage from the profit sharing arrangements. It argues that no hotel will enter into profit sharing arrangements unless TAB Limited can offer a material advantage to the acquirer in some other aspect of the transaction (machine quality, purchase price, finance costs or terms of trade) in which it is subject to vigorous competition. New South Wales also notes that the competitive advantage provided by the exclusive licence is insignificant, with less than 1 per cent of hotels with gaming machines financing through profit sharing.

The Council considers that the exclusive investment licence granted to TAB Limited does not meet the CPA guiding principle and, therefore, assesses New South Wales as not having met its CPA obligations in relation to the

Gaming Machines Act. However, the Council acknowledges that the market impact of the exclusive licence is not significant and notes the Government's announcement that it intends to withdraw the exclusive investment licence via legislation that will go before Parliament in the spring 2004 session.

Racing Administration Act 1998

The New South Wales review of its racing and betting legislation recommended only minor changes to the state's racing and betting legislation. The government accepted the review recommendation to allow bookmakers to operate as proprietary companies. The review also recommended retaining other restrictions, such as the Act's requirement for a $200 minimum phone bet for bookmakers and the prohibition on interstate betting providers advertising in New South Wales.

New South Wales reduced the minimum bet on metropolitan gallops to $50 on 1 October 2003 and will abolish the minimum bet from 1 July 2004. To address the Council's concerns regarding cross-border advertising restrictions, New South Wales commissioned a further review of these provisions. The review argued that advertising restrictions provide a public benefit by:

- helping to ensure those who obtain benefits from racing results contribute to the racing industry. Removing the restrictions would potentially divert business from TAB Limited (which contributes a proportion of its earnings to the racing industry) to corporate bookmakers in jurisdictions that do not require bookmakers to pay product fees to the racing industry and that provide favourable taxation and regulatory conditions relative to New South Wales.

- ensuring the integrity of totalisator odds, which can be undermined by non-totalisator wagering products (particularly 'TAB-odds' products) that are legal in some other jurisdictions

- ensuring New South Wales punters do not suffer the consequences of the lack of security from placing their funds with interstate bookmakers operating in jurisdictions with different regulatory regimes.

The Council acknowledges that preventing interstate bookmaker advertising may assist TABs and thus the racing industry but notes that there are alternative approaches to funding the racing industry (as discussed in the Productivity Commission report on gambling). These alternatives, however, require interjurisdictional agreement. Similarly, the other benefits claimed for the advertising restrictions result from differences in regulation across jurisdictions.

Currently, without interjurisdictional cooperation, the findings of the New South Wales review have some limited validity: restrictions on advertising appear to be the only way to achieve the objectives of the legislation. The Council thus assesses New South Wales as having met its CPA obligations in

relation to the Racing Act. In the long term, however, the Council looks to jurisdictions to resolve cross-border betting issues and devise a method of funding the racing industry that minimises the need to restrict competition among betting providers.

J1 Planning and approval

Environmental Planning and Assessment Act 1979 and planning and land use reform projects

Following 1998 reforms, New South Wales has a streamlined 'one-stop shop' system for development, building and subdivision approvals under the Environmental Planning and Assessment Act (EP&A Act). Accredited certifiers can compete with councils in the assessment of compliance functions and technical standards.

The government is reviewing planning. A White Paper released in February 2001 proposed whole-of-government strategic planning, greater community involvement, and greater accessibility to planning information. It proposed integrating all policies and plans for environmental and land use issues into one instrument for each local government area, one regional strategy for each region and one state planning document.

The New South Wales Government advised the Council in December 2002 that it had not listed the EP&A Act for review under the CPA, so did not intend to report on this legislation. It stated that it would continue, however, to provide information on 30 planning and land use reform projects to the Council.[3] The Council advised New South Wales that it accepted that the competition restrictions in the EP&A Act are being examined in the context of other review processes, and that it would monitor the progress of the 30 listed projects.

New South Wales reported in April 2004 that 27 of the 30 projects had been completed or almost completed. The remaining three projects relate to planning approvals and standards, and have been subsumed in reviews of state, regional and local planning functions. In these reviews, the Government is seeking to improve planning efficiency; reduce transaction costs; balance environmental, social and economic priorities; realise community priorities; and provide predictability for land use. The government considered these reviews and in September 2004 announced planning reforms that will require legislative and administrative change.

[3] Box 10.1 of the 2003 NCP assessment (NCC 2003, volume 1) listed the 30 reform projects.

The Council considers that New South Wales has made substantial progress in addressing potential restrictions on competition in planning and development processes, but that it has yet to implement all of the reforms. The Council thus assesses New South Wales as not having met its CPA clause 5 obligations in this area because review and reform activity is incomplete.

J2 Building professions

Architects Act 1921

A national review of state and territory legislation regulating the architectural profession was completed in 2002. Chapter 19 provides more details on this national review.

In May 2003 New South Wales introduced the Architects Bill 2003, which provides for the repeal of the Architects Act and the implementation of the nationally agreed framework, including:

- the introduction of the concept of a registered architect
- the removal of the requirement that at least one-third of the directors of a company offering architectural services be chartered architects
- the inclusion of community, consumer and industry representatives in the membership of the NSW Architects Registration Board.

The Bill was passed in 2003 and given royal assent on 10 December 2003. The Council assesses New South Wales as having met its CPA clause 5 obligations in this area.