5 Transport

The National Competition Policy (NCP) is relevant for all modes of transport. The major elements of the NCP that apply to transport are:

- clause 5 of the Competition Principles Agreement (CPA), which obliges governments to review and, where appropriate, reform legislation that regulates transport, particularly legislated licensing requirements that limit the number of taxis and hire cars;

- clause 3 (competitive neutrality) of the CPA, which obliges governments to ensure government-owned rail and port businesses apply competitive neutrality principles;

- clause 4 (structural reform) of the CPA, which obliges governments to review the structure of public monopolies (including any prices regulation arrangements) before privatising monopolies or introducing competition to the former monopoly market. This clause is relevant where rail, port and airport businesses are privatised and/or third party access regimes are introduced in these areas; and

- Council of Australian Governments (CoAG) reform of the regulation of the road transport sector, which is aimed at improving the consistency of regulation nationally in areas such as vehicle registration and operations, and driver licensing. (This is one of the four sector-specific reforms).

This chapter considers governments' compliance with obligations under the CPA. Chapter 3 discusses governments' compliance with the CoAG reform obligations for road transport.

Taxis and hire cars

All States and Territories regulate the taxi and chauffeured hire car sectors. Regulation of taxis is broadly similar across all jurisdictions, and has two broad aims: limiting entry to the industry via licensing and setting the service quality standards required of vehicles and drivers.

- Limits on taxi licence numbers have over the past two decades reduced the number of taxis relative to population and encouraged increases in the real (adjusted for inflation) value of taxi licence plates. (Fares have also been regulated as a corollary to the restrictions on licence numbers.) The limit on licence numbers (taxi plates) is the major regulatory issue for the NCP.

- Regulation of standards covers matters such as the age and roadworthiness of vehicles and the entry requirements for drivers. These regulations relate to service quality and emphasise passenger safety. Standards regulation in the taxi sector does not have substantial impacts on competition.

The hire car sector also faces significant regulation, including restrictions on licence numbers and minimum fare requirements in most jurisdictions, and driver and vehicle quality regulations. Entry restrictions for hire cars are not endemic, as with taxis, but are nevertheless widespread. Only Western Australia and South Australia currently have effective free entry to the hire car industry.[1] There are also other constraints on hire cars that exceed those on taxis. Passengers must book in advance, some jurisdictions set a minimum fare for hire cars (up to twice the standard taxi detention rate) and some impose a minimum hire period of one hour. Most jurisdictions also require the vehicle providing the hire car service to be of a higher standard than taxis.

International experience

Most Western governments impose entry restrictions in the taxi and hire car services, although there is a recent trend to removing or loosening those restrictions. New Zealand, Sweden and, most recently, Ireland have removed supply restrictions since 1989. Taxi licensing in many cities in the United States was deregulated during the 1970s and 1980s. Almost all governments impose service quality regulation.

Victoria's NCP review investigated the experiences of other countries in some detail. The Victorian review noted the United Kingdom's regulatory approach, which has no explicit supply restrictions on either cabs or 'mini-cabs' (that is, hire cars) in the London area, but has some (recently relaxed) restrictions in other parts of the country. The review concluded that 'the combination of hire cars and taxi-cabs appears to work reasonably well'. It noted in the context of the United Kingdom's new taxi industry legislation that 'there has been no attempt … to limit the number of these vehicles; it [the legislation] addresses problems resulting from a lack of quality controls, not too many vehicles' (KPMG Consulting 1999, pp. 121–2).

The Victorian review also cited a 1994 analysis of Sweden's experience following its deregulation in 1991. The 1994 analysis found there was an increase in the number of cabs and consequent reduction in waiting times and that, while there was some increase in fares, it was likely that user gains due to reduced waiting times more than offset costs to consumers. High licence

1 A number of other jurisdictions notionally have free entry but constrain entry in practice by levying licence fees. The Northern Territory imposes an annual licence fee and a one-off entry fee of $10 000. Tasmania allows entry subject to a $5000 fee. Current Victorian reforms establish a $60 000 fee for a perpetual hire car licence.

values were not a significant feature of pre-deregulation Sweden (KPMG Consulting 1999, p. 126).

Several Australian NCP reviews of taxi and hire car legislation considered the experience of New Zealand, which deregulated in 1989, concluding that deregulation has been successful. The number of taxis in New Zealand increased substantially, from 2567 in 1989 to 6903 in 1998. Fares were lower overall in real terms in 1998 than in 1989, although there was more variation in fares. In addition, a range of different services developed following deregulation, including public transport services, different vehicle types (including different sized vehicles and different quality levels) and the provision of mail deliveries and other services under contract (KPMG Consulting 1999, pp. 124–5).

Ireland deregulated its taxi supply arrangements recently, and it is too early to draw firm conclusions. There has been, however, a rapid and substantial increase in the number of taxi licences, indicating a major supply response to the removal of restrictions.

Some studies consider the experience of the United States, where many cities deregulated the taxi industry during the 1970s and 1980s, as being negative. Teal and Berglund (1987) and Price Waterhouse (1993) (cited in KPMG Consulting 1999) report a range of adverse outcomes. These include increased fares (particularly in the short run), higher rates of trip refusals and no-shows, older vehicle fleets and lower vehicle standards, lower productivity (that is, trips per cab) and limited service improvements despite increasing taxi numbers because cabs tended to congregate in well-serviced areas such as airports. Many of these problems relate, however, to failures of quality regulation, rather than to supply deregulation. Moreover, pre-deregulation licence values in the United States were generally much lower than those currently in Australia, suggesting that there was less scope for deregulation to lead to major market realignments in favour of the consumer than is the case in Australia. Tellingly, 15 of the 21 cities considered by Price Waterhouse maintained their open access policies, indicating that around three quarters of cities found, on the basis of direct experience, that removing supply restrictions provided a net benefit.

Overall, there is an apparent trend toward the removal of supply restrictions on taxis in many countries, although the pace of reform is relatively slow, probably reflecting the power of taxi plate owners. Overseas experience of removing supply restrictions appears to be positive, although achieving beneficial outcomes depends on sophisticated regulatory design that ensures appropriate quality controls and other market support mechanisms are in place.

Competition in taxi services

The impact of restrictions in the provision of taxi and equivalent services depends on the importance of these services to the community and the likely market power of taxi service providers with and without those restrictions. These factors in turn depend on:

- the nature of the taxi services;
- the potential for competition between taxi services and other modes of transport providing relevantly equivalent services, that is, the market for taxi services;
- the extent and nature of regulatory constraints on the supply of taxi services;
- regulatory constraints on the supply of alternative services and on competition between taxi services and services provided by other modes of transport; and
- economic reasons why the market for taxi services may not work effectively.

The nature of taxi services

Taxis provide on-demand, point-to-point personal transport services within a region such as a large metropolis. The dominant characteristic of taxis is the ready consumer identification of the vehicles providing taxi services, which promotes consumer awareness of, and confidence in, the service offered.

Taxi services are provided at short notice and also with some forward notice (often in response to phone bookings). Taxis can be seen as providing at least five distinct services, each with particular characteristics. These distinct services are:

- where a telephone booking is made for some future time ('pre-booked' travel);
- where a telephone booking is taken for immediate despatch of a vehicle ('telephone despatches');
- where customers queue at a designated point for pick-up ('rank' hires);
- where customers hail taxis from the street (the 'cruising' segment); and
- Wheelchair Accessible Taxi services.

On-demand, point-to-point personal transport services can be provided by other transport modes. Hire cars provide closely equivalent services, especially for booked services, short-notice phone bookings and where the hire

car has access to cab ranks. The lower profile of hire cars is a disadvantage in the cruising sector — consumers are more likely to identify and hail taxis. Specialised bus services that provide on-demand, point-to-point transport to more than one customer concurrently are also closely equivalent to taxis in some circumstances, such as transport on popular routes, for example between airports and city centres. Other public transport modes, such as bus and train services, might be considered alternatives to taxis, albeit with some significant loss of convenience. On many occasions, travellers would also regard use of their own car as an alternative to taxis.

It is possible to distinguish among these possible alternative transport modes. One distinction is between public and private transport. Taxis and hire cars constitute a part of the public transport system. Private cars (as well as rental cars) constitute a 'self-drive' option, but may be poor alternatives in some contexts, whether because of concern about drink-driving, the need to find parking, or because one way transport is required. Another distinction is between scheduled fixed route and on-demand, point-to-point services. Many public transport options (trains, buses, trams) follow fixed routes and have fixed departure times. Further, public transport options may be unavailable for late night custom.

Importantly, the extent to which different modes of transport might provide viable alternatives for travellers is often limited by regulation. Regulation can restrict alternatives to taxis directly. Hire cars for example are commonly prevented by regulation from servicing the rank and cruising segments. Regulation can also have an indirect impact on alternatives to taxis. Vehicle standards for hire cars for example can make it impractical for hire cars to provide services in particular market segments.

The market for taxi services

A market is the minimum field of rivalry between suppliers of products where a hypothetical monopoly could exercise substantial market power, that is exercise the ability to price its products significantly and sustainably above the cost of producing those products. Market analysis is critical to judgments about the extent of competition, or the extent of restrictions on competition, in the supply of particular products, such as taxi services. A market delineates the bounds of competition in relation to a particular product.

The Trade Practices Tribunal has defined 'market' in the following way:

> *A market is the area of close competition between firms, or putting it a little differently, the field of rivalry between them (if there is no close competition there is of course a monopolistic market). Within the bounds of a market there is substitution — substitution between one product and another, and between one source of supply and another, in response to changing prices. So a market is the field of actual and potential transactions between buyers and sellers amongst whom there*

> *can be strong substitution, at least in the long run, if given a sufficient price incentive.* (Re Queensland Co-operative Milling Association Ltd (1976) 25 FLR 169 at 190)

This definition of a market has been accepted by the High Court in Queensland Wire Industries Pty Ltd v The Broken Hill Pty Ltd (1989 167 CLR 177) and was adopted by the Australian Competition Tribunal in the context of Part IIIA of the *Trade Practices Act 1974* in the Sydney Airport case (Sydney International Airport [2000], ACompT 1, paragraph 91).

Where competing services from other transport modes, such as hire cars, are provided in the same market as taxi services, any problems associated with regulatory restrictions in the provision of taxi services will be reduced. This is because the availability of competing modes of transport will constrain, at least to some extent, any market power that might otherwise be available to taxis as a consequence of regulatory restrictions. Thus, if taxis do not have the ability to price their services substantially above costs because they would lose too much business to, say, hire cars, then a theoretical monopoly supplier of taxi services would not have substantial market power. Any definition of the market for taxis would have to include hire cars. Market analysis for taxi services is important, therefore, to understanding the costs of restrictions on taxi services, as well as understanding which approaches to reducing those costs are likely to be effective.

Whether hire cars or other transport modes are capable of providing viable substitute services for taxis depends largely on consumer preferences for point-to-point personal transport services; that is, the demand for taxi services. Demand for taxi services can be segmented by the purpose of the travel undertaken, such as business, private/social and tourism. Each is likely to have different demand characteristics. Demand for business travel is generally characterised by relatively low levels of price elasticity[2] but particular sensitivity to reliability and timeliness. Private or social demand is likely to be more price sensitive and, in many contexts, less time sensitive than business travel. Tourism demand is likely to be the least time sensitive, but may exhibit a high level of sensitivity to quality issues such as safety and reliability (for example, the perception that a taxi will take the most appropriate route).

The relative importance of these demand segments varies across jurisdictions. The Victorian NCP review estimated that around 31 per cent of demand in that State was business derived, 16 per cent was tourist derived and 53 per cent was from the household sector. A widely observed trend is strong growth in tourist demand, in line with generally increasing levels of international and domestic tourism in Australia.

2 Price elasticity of demand is a measure of the sensitivity of demand to changes in the price of a good or service. Low price elasticity of demand means that demand is unlikely to increase (decrease) significantly if price falls (rises).

Wheelchair Accessible Taxis are a growing sector, because all governments have sought to improve the access of disabled persons to transport services. This involves issuing specific taxi licences for vehicles equipped to carry wheelchair-bound occupants, as well as providing subsidies to users so they have access to the taxi service. The Victorian NCP review reported that the Victorian Government's 'Multi-Purpose Taxi Program' had a budget of $36.8 million in 1997-98, which was equal to more than 10 per cent of total taxi industry revenue (KPMG Consulting 1999, p. 25).

The ACT NCP review report emphasised that potential taxi users include a broad section of the community including:

- school children to retirees;
- business executives to unemployed youth;
- sophisticated patrons of the arts to economically/socially disadvantaged persons;
- fit and healthy sport participants to frail aged residents of health care facilities; and
- people with meticulously planned travel schedules, to spontaneously required travel imperatives resulting from vehicle breakdown, urgent medical needs or non-arrival of a bus, friend, hire car etc (Freehills Regulatory Group 2000, pp. 140-1).

Demand characteristics and substitution opportunities vary widely among such groups. The ACT review report stated:

> *Depending on the type of consumer, substitutes for taxi and hire car services vary. For instance, for the one-car modest income family, taxis compete with subsidised transport such as buses, Health and Community Care vehicles and the motor vehicles of friends and relatives. On the other hand, for the patronage of interstate visitors, including politicians, taxis, hire cars, rental vehicles and Comcar providers are in direct competition.* (Freehills Regulatory Group, 2000, pp. 140–1)

There is substantial evidence on the extent of substitution away from taxi services over the past five to ten years. Taxi industry submissions to the various NCP reviews have expressed concerns about competition from hire cars. Some NCP review reports have documented declining levels of activity in the taxi industry. The Western Australian NCP review reported that the use of taxis for business trips almost halved between 1990 and 1996 and that a further 30 per cent fall occurred between 1996 and 1999 (BSD 1999, p. 16 and p. 18). These figures suggest there has been a loss of market share in the business traveller segment by taxis of almost two thirds within less than a decade, and that business travellers are substituting to other transport modes. The Western Australian review report stated that:

> *There is … evidence that the industry is losing market share and failing to meet consumer expectations … The industry is static, profitability is declining and owners and drivers face significant competition from other transport sources.* (BSD 1999, p. 16)

The Victorian NCP review reported a decline in taxi hirings over a longer timeframe, finding that the number of passenger trips declined by 8.5 per cent between 1983 and 1998. It noted that, by contrast, the number of train trips in the State rose by over 30 per cent during the equivalent period, suggesting a significant loss of market share by the taxi sector over time (KPMG Consulting 1999, p. 27).[3] The ACT NCP review reported that 'taxi hirings in the ACT has [sic] fallen by about 7.5 per cent over the last three years' [that is 1996 to 1998] (Freehills Regulatory Group 2000, p. 147). The subsequent report by the Independent Competition and Regulatory Commission (ICRC) found that the decline in taxi usage observed between 1996 and 1998 continued between 1999 and 2001. Total telephone bookings fell by a further 8.4 per cent during this period, while rank and cruising bookings fell by 14.8 per cent; total bookings therefore fell by 10.9 per cent between 1999 and 2001 (ICRC 2002b, p. 61). Taking the data from the two ACT review reports, the total decline in trips over the five years from 1996 to 2001 was 14.4 per cent. That is, the ACT taxi industry lost one seventh of its total custom within five years, at a time of strong economic growth. Hire car usage data for 1995-1998 presented in the ACT review show no increase in the average number of journeys completed by hire cars, suggesting either that any diversion of custom to hire cars was delayed or that other transport options, such as private vehicle use or self-drive rental cars, diverted demand from taxis.

The New South Wales NCP review report suggested that demand for taxis is increasing in Sydney, although its conclusion is based on evidence that does not consider the rank and cruising segments (IPART 1999b, pp. 34–5). Given that Sydney has by far the lowest number of hire cars relative to population, this observation is consistent with the view that substitution between taxis and hire cars is important. That is, taxi hirings may be growing in Sydney, by contrast with Victoria, Western Australia and the ACT, partly because the very small number of hire car licences in New South Wales substantially reduces the possibility of substitution towards hire cars. Surprisingly, the remaining NCP reviews did not investigate trends in demand, despite their obvious importance for assessing the public benefits and costs of current restrictions on competition. Consequently, there is a restricted factual basis on which to make judgments in this area.

The evidence of declining patronage of taxis in some jurisdictions suggests that continuation of tight taxi supply restrictions may be leading to substantial substitution away from taxis towards other modes of transport. At least some of this substitution appears to have been to hire cars, although

[3] Average taxi trip lengths increased substantially despite the reduction in hires, meaning that total passenger kilometres grew by 57 per cent.

this picture is clouded by the lack of available data and differing restrictions on hire cars across the States and Territories. Some of this substitution is probably to less preferred modes of transport, as suggested by Victoria's review evidence (cellophane fallacy substitution).[4] While the evidence is by no means clear, it appears likely that, in most contexts, public transport options based on fixed routes and times are relatively poor substitutes for taxis. That is, changes in the price or availability of taxis are likely to result in only limited substitution to public transport. Mini-bus services combining some elements of both bus and taxi services (such as operate in the Northern Territory) are likely to constitute a closer substitute.

Taxis and hire cars are the closest substitutes for a large proportion of the above demand segments. This substitutability is recognised in most NCP reviews, many of which note that the hire car industry provides the only close substitute for taxi services in the sense that a passenger hires a chauffeured vehicle to complete a specific journey. This point is implicitly recognised in that the same legislation regulates both taxis and hire cars in most jurisdictions. Consideration of the effects of taxi regulation must therefore also take account of the hire car sector. In this regard, the Council concurs with the findings of ACT review report, which states that:

> *Though the different purposes for which an SCPV [Small Chauffeured Passenger Vehicles] service is sought can limit substitutability between different types of SCPV vehicles, it is our view that evidence of sufficient competition between different types of vehicles reduces the importance of this distinction. Accordingly, it is our view that the relevant SCPV markets are segmented according to pre-booked SCPV services and cruising (rank or hail) SCPV services.*
>
> *We take the view that the market for pre-booked services would include all SCPVs including those vehicles currently licensed as taxis, hire cars RHVs [restricted hire vehicle transport services] and smaller MOs [motoromnibus transport services], as well as any unlicensed RHV-type vehicles currently being utilised for SCPV services.*
>
> *It is our view that the market segment for cruising SCPV services would include SCPV vehicles that, as a minimum, have an appropriate level of external identification to make them sufficiently recognisable as SCPVs for hire.* (Freehills Regulatory Group, 2000, p. 24)

4 US v E I Du Pont de Nemours and Co (1953) F Supp 41. This case involved questions of substitution between cellophane (the supply of which was monopolised) and wrapping paper. The case gave rise to the notion of cellophane fallacy substitution; that is, an artificial form of substitution toward a less valuable product driven by a very high price for the product in question. Artificial substitution such as this is not the result of effectively competitive markets and reduces community welfare because consumers are 'making do' with a less valuable product.

This suggests that hire cars and other forms of on-demand point-to-point transport services have the potential to impose, at least, substantial competitive pressure on taxis across the full range of taxi services. The extent of this competitive pressure across all taxi services may depend on the freedom granted to taxi alternatives to operate in the ways that taxis operate; that is, to the extent that there are regulatory constraints on hire cars they will be a less than perfect substitute. Because of the physical and market needs of particular taxi users, notably in the cruising segment, taxis may nonetheless be able to exercise some market power, even in the absence of regulatory constraints on all modes of personal transport, because of their higher visibility and likely greater availability.

Regulatory constraints on taxis

As noted above, the major regulatory constraint on taxis is the control on entry and the associated controls on fares. This section discusses the inter-relationship between these controls and evaluates evidence from consumer surveys to rebut claims made by some governments that consumers do not suffer as a consequence of regulatory constraints on taxi services.

Supply restrictions

State and Territory legislation generally provides for new licences to be issued only at the discretion of a regulator or a Minister. The outcome has been a long term decline in the number of taxis, relative to population, because lobbying has meant that new licences are rarely issued. In Brisbane, for example, the number of taxis per 10 000 population fell from 19.8 in 1960 to 13.3 in 1990 and to 9.8 by 1999 (Gaunt and Black 1996, p. 57 and IPART 1999a, p. 75). Similar declines in taxi supply are observed in other capitals. In Melbourne, for example, the number of taxis per 10 000 population fell from 12.3 in 1951 to 9.6 in 1995 (KPMG Consulting 1999, p. 55). The supply shortfall in Australian capitals is emphasised by a comparison with cities in New Zealand, where markets are deregulated. The New South Wales review estimated in 1999 that the number of taxis in Australian cities was about one quarter to one third that in New Zealand cities; the number of taxis per 10 000 population in Australian capital cities was estimated to range between 7.7 and 11.4, compared with 29.3 in Auckland and 36.6 in Wellington (IPART 1999a, p. 75).

The real value of taxi licences in all States and Territories has increased as the supply of taxis relative to population has declined. The Productivity Commission noted substantial real increases in taxi licence values in all Australian capitals during the 1990s (PC 1999d, p. 15). The Victorian NCP review of the taxi industry found that the real value of a Melbourne taxi licence increased almost fourfold between 1975 and 1998 (KPMG Consulting 1999, p. 55). Victorian Government estimates show there has been a further

increase in the last three years, with licences now valued at $330 000 in Melbourne.[5] Indeed, the value of a taxi licence is now higher in Australia than in almost all other countries. Melbourne's current licence value of $330 000 is approximately equal to that of licences in New York City, where no new licence has been issued since 1937.[6]

The reductions in the number of taxis relative to population have occurred in an environment of likely increasing demand for on-demand passenger transport services as a result of factors such as expansion in tourism and growth in real per capita incomes. The NCP reviews, which have largely focused on demand for taxi services per se, rather than on total demand for on-demand passenger transport services, provide little direct quantitative evidence of increasing demand, beyond their confirmation of the rapid increases in taxi plate values that occurred in most major cities over the 1980s and 1990s. The increased plate values provide fundamental evidence, however, that demand has increased strongly in the context of near static supply. Since licence plate prices represent the capitalised value of expected future returns to the asset, and regulated fares have remained historically constant in real terms, only increasing demand for taxi services can explain the often massive increases in plate values observed.

Moreover, as noted above, the review present several indications that taxis are losing market share to substitute services where these are available. Thus the increases in demand reflected in plate prices is occurring in a context in which the taxi share of the overall market for on-demand passenger services is declining, in some case substantially. The evidence that demand for taxi type services is not being fully captured by taxis suggests that restrictions on supply, by reducing the availability of taxis and maintaining fares at a level above which they might otherwise settle (to service the capital cost of purchasing licence plates), may adversely affect the longer term health of the taxi industry.

Estimated cost to the community

NCP review reports indicate that the net cost of restricting licence numbers is considerable. The Victorian review report concluded that:

> *The greatest influences on the size of the losses are the licence values and the elasticity of demand. As the licence value grows (assuming other things equal) the size of the losses increases at an increasing*

5 The Victorian Government estimates the current licence value at $330 000 (see Department of Infrastructure 2002). This compares with an estimated value of $259 100 in 1997 (KPMG Consulting 1999, p. 53).

6 Malanga (2002) reports the current New York City price as being US$200 000, or approximately A$350 000. In 1999, the Productivity Commission reported a licence value for New York City of US$60 000 (PC 1999d).

> *rate…The efficiency losses grow exponentially as price-cost margins and licence values increase.* (KPMG Consulting 1999, pp. 92–93)

This link between licence values and the costs of supply restrictions derives from the fact that, where licence values are high, a substantial proportion of fare revenue is used to service the capital costs of those licences. The New South Wales review concluded that around one fifth of taxi revenue in Sydney is accounted for by this cost (IPART 1999b, p. 61). Similarly, the Victorian review found that fares in Melbourne are around 30 per cent above competitive levels as a result of the need to service the capital costs of taxi licences (see below). In some jurisdictions, the size of this effect is substantially larger still: Malanga (2002) states that over 50 per cent of taxi industry revenue in New York City now accrues to taxi licence owners. NCP reviews gave the following estimates of the aggregate cost of restrictions on the supply of taxi licences.

- Victoria's 1999 NCP review estimated that the annual cost to the community (based on then taxi plate values of $250 000) of taxi supply restrictions was $72.1 million, comprising transfers from passengers to plate owners of $66.1 million and deadweight losses of $6 million.[7] The review estimated that the average price of a taxi journey was $2.96 higher than it would have been if the market were unrestricted. The estimated total cost of $72.1 million can be compared to annual revenue accruing to the taxi sector of $320 million. At current Melbourne plate values ($330 000), the annual deadweight loss from supply restrictions would be $13 million (KPMG Consulting 1999, p. 93).

- The 2000 ACT review estimated the annual transfer from ACT passengers to plate owners to be $5.6 million per year, and the deadweight loss at approximately $408 000. The ACT review based its estimates on an average licence value of $260 000, 217 unrestricted licences and an average fare of $11.74 (Freehills Regulatory Group 2000, pp. 149–151).

The analysis by the Victorian and ACT reviews suggests that, with rising licence plate values in most Australian capitals, the cost to the community from restricting the supply of taxis is significantly increasing. Based on the estimates from the Victorian review and assuming an average plate value across Australia of $200 000, total transfers from consumers to plate owners could be as much as $200–250 million a year, while annual deadweight losses may be as much as $20–25 million.[8]

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7 The deadweight loss arises because fewer taxi journeys are taken than would be the case in a market with unregulated supply, because of higher prices in the restricted market.

8 The analysis assumes that taxi supply in a deregulated market is perfectly elastic. If, however, elasticity of supply is positive, there will also be a loss in producer surplus, thereby increasing the total loss. The Victorian review argued that the loss of producer surplus is likely to arise, but ignored it because of measurement difficulty (KPMG Consulting 1999, p. 92).

Price regulation

All Australian jurisdictions regulate maximum taxi fares. Where governments' NCP reviews have reported on fares, they show that fares have risen approximately in line with the consumer price index, notwithstanding some year-to-year variation. The Victorian review indicated for example that the real (1998 dollars) average fare varied between approximately $10.80 and $13.00 in the period 1975–1998, but that the 1981 figure was almost identical to those for 1994–1998. The Victorian review also indicated that taxi fares grew overall at the same rate as private motoring costs over the period 1981–1998 (KPMG Consulting 1999, pp. 60-61). These outcomes are consistent with a pricing policy that appears to seek stability and predictability in taxi fares.

Over the same period, there have been substantial increases in licence plate values. On one view, licence plate values are equal to the expected (capitalised) value of the future stream of revenues that can be earned from the licence. Any reduction in fares will reduce those revenues and, therefore, the price of the licence. Another way of explaining the relationship between fares and licence plate values is that fare revenues must cover the costs of taxi services. These costs include operating costs, administrative fees, booking and despatch membership fees, driver income and a return to the taxi owner to cover capital costs, including the cost of the licence plate. The higher the licence plate value, the higher the costs of taxi services. Supporting this view is the fact that the long-run value of licence assignments[9] has remained quite constant at approximately 8 per cent of the market price of the plate licence.

Lower taxi fares may mean lower licence plate values. There is a strong likelihood that fare reductions would be reflected in the short term in reduced assignment values. Because licence assignments can be relatively short term in nature, an assignee would be likely to exit the industry or search for a less expensive licence assignment if a fare reduction rendered the operation of the existing licence unprofitable. The price of the assignment may fall relatively quickly. In turn, lower assignment revenues to licence plate owners may drive the value of licence plates down.

Alternatively, lower fares may put pressure on the other costs of providing taxi services. Virtually all reviews have indicated that the current, very high, values of taxi licences co-exist with extremely poor levels of driver remuneration. In fact, one explanation of experience to date is that with relatively stable fares, declining driver incomes are funding rising licence plate values. Several reviews have suggested that average driver incomes are currently around $7.50–$8.00 per hour. Anecdotal evidence suggests that, currently, some driver incomes may be even lower. Anecdotal evidence also

[9] The assignment cost of a taxi is the charge paid by drivers to taxi owners for the use of the taxi. The charge represents the owners' return on the capital costs of the taxi (including the plate values).

suggests, not surprisingly, that lower driver incomes are associated with falling driver standards.

Lower fares would mean some benefits to licence plate owners and (particularly) drivers. Reductions in real fare levels would be expected to substantially increase taxi demand. Several reviews have used an estimate of likely demand elasticity of –0.8. This implies that a 10 per cent reduction in fares (for example) would give rise to an 8 per cent increase in demand. The resulting increase in taxi usage, especially outside peak times, would have some offsetting effect on revenue and profitability and, thereby, on driver incomes and licence values.

This analysis suggests that there is a rather fluid relationship between taxi fare levels, licence plate values and driver incomes. Changes in fare levels are likely to result in some mix of corresponding changes to plate values and/or driver incomes, but it is difficult to predict these changes precisely. Changes in fare levels will also have an inverse impact on demand for taxi services, which in turn will have a countervailing impact on plate values and/or driver incomes.

Consumer satisfaction

Some governments have argued that survey data indicate a high level of consumer satisfaction with taxi services and that this high level of satisfaction indicates that there is no need for substantial reform. Perceived consumer satisfaction is not directly relevant, however, to the CPA clause 5 guiding principle. In any case, scrutiny of some of the material cited does not support the conclusion that consumers are satisfied. Moreover, consumer satisfaction is being measured in a context in which consumers have no experience of an unrestricted market on which to base comparisons.

The Queensland NCP review reports subjective rankings for various criteria, based on a five point scale in which a rating of 3 is 'fair' and 4 is 'good'. In relation to the criteria of 'availability in your area' and 'waiting time after telephone hire', the average scores reported were 3.9 and 3.8. respectively (Queensland Government 2000, p. 79). The New South Wales NCP review found a substantially lesser degree of consumer satisfaction in relation to waiting time. Slightly more than half of respondents rated waiting time after telephone booking as 'good' or 'very good'. This figure fell to around 43 per cent for waiting time at ranks and little more than 30 per cent for street hails (IPART 1999b, p. 27).

The Western Australian NCP review cited a survey showing 93 per cent of respondents were 'very' or 'quite' satisfied with the service received on their most recent taxi journey. The same review also cited data indicating that 42 per cent of peak time calls to taxi despatch services were not even answered, with company management blaming an inadequate supply of vehicles (BSD 1999, p. 10). The review made no attempt to reconcile these apparently contradictory observations.

Overall, the data on consumer satisfaction appear to be somewhat ambiguous and the reported survey methods make interpretation of the data difficult. More fundamentally, there is a question about the interpretations drawn from the survey data because consumers generally have little or no experience of a deregulated market with which to compare their experiences in the current regulated market. This emphasises contrasts between the claims of consumer satisfaction (based on these data) and evidence of declining patronage.[10] Given that patronage is an indicator of effective demand, it provides a more reliable guide to consumer satisfaction.

Declining patronage appears to be particularly acute in the generally less price sensitive business market. This is to be expected given that regulatory restrictions require hire cars – the closest substitute for taxis – to charge substantially higher prices in many jurisdictions. These restrictions have in some cases been justified as protecting taxis from competition from hire cars. Their success in this regard seems partial and perhaps declining. More generally, consumer satisfaction, as measured via the market share of taxis, may fall further if more price-competitive substitutes are made available, for example by removing price restrictions on hire cars and increasing the number of hire cars so they are better able to compete in the market segments served by taxis.

Regulatory constraints on taxi alternatives

The main taxi alternative, the hire car sector, seems initially to have focused on special purpose hires, such as for weddings and other formal events. Arguably, for some consumers, the hire car continues to be seen largely as providers of special event services, perhaps limiting consumers' tendencies to use hire cars as a substitute for taxis. Over time, however, the range of transport services provided by hire cars has broadened substantially (as recognised in regulation by the distinctions among different types of hire cars). Hire cars now compete strongly with taxis in several areas. The historical regulation of the supply of taxis and the increasing supply constraints on taxis have, over time, probably improved hire cars' opportunities to compete with taxis.

The most obvious remaining regulatory restriction on the ability of hire cars to compete with taxis is the strict limit on the number of hire cars that most governments impose. The number of hire car licences is considerably less than the number of taxi licences, although hire car numbers have grown substantially in recent years in some jurisdictions. Some jurisdictions appear to have allowed greater entry to the hire car sector partly as an indirect

[10] As noted above, several reviews have reported declines in the number of hirings. While the Victorian review also reported an increase in passenger-kilometres travelled, this was nonetheless associated with apparently declining market share.

means of addressing the shortfall in taxi numbers. This strategy has not always resulted in greater entry, because there are other regulatory restrictions on the operation of hire cars.

Entry restrictions for hire cars are not endemic, as they are with taxis, but are nevertheless widespread. Only Western Australia and South Australia have effective free entry to the hire car industry.[11] While New South Wales, Victoria, Queensland, Tasmania and the ACT limit hire car numbers,[12] the effect of these limitations in practice — in terms of the ability of the hire car sector to compete with the taxi sector — varies. Victoria for example has 508 hire car licences[13] and 3898 taxi licences. By contrast, New South Wales has 321 standard hire car licences (plus 175 short term licences) compared with 5428 standard taxi licences. In terms of capacity to compete with taxis, the hire car sector in Victoria is therefore better positioned than it is in New South Wales.

The second broad regulatory restriction on the ability of hire cars to compete with taxis is the prohibition, in virtually all jurisdictions, on hire cars providing rank and hail services. Except for limited opportunities to 'rank' at airports or other major pick-up points, hire cars can compete with taxis only in the provision of pre-booked and telephone despatch services.

The importance of this restriction varies according to the relative size of the demand for rank and hail services versus pre-booked and telephone despatch services. In the ACT, demand for rank and hail services is 37 per cent of total demand, while telephone bookings account for the remaining 63 per cent (ICRC 2002b, p. 61). Similarly, approximately 50–60 per cent of trips in Western Australia are the result of telephone bookings (BSD 1999, p. 8). In contrast, the evidence from Victoria is that 50–55 per cent of demand is for rank and hail services within metropolitan Melbourne (KPMG Consulting 1999). This is also the case in New South Wales, where approximately 55–60 per cent of taxi hires derive from the rank and hail markets within Sydney (IPART 1999b, p. 26). Overall, the rank and hail services, which regulation prevents hire cars from providing, appear to constitute about 40–60 per cent of total taxi services (although less in less densely populated areas). Regulatory restrictions therefore allow hire cars to compete with taxis in only 40–60 per cent of total taxi services.

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11 The Northern Territory has free entry to both taxi and hire car industries, although entry is substantially constrained in practice by the annual fee of $10 000. Victoria's reform proposals would create a similar situation, with a proposed $60 000 fee for a perpetual licence. Tasmanian legislation allows entry subject to a $5000 fee.

12 New South Wales limits the number of permanent licences, but not the number of short term licences.

13 This is the number of standard hire car licences (see KPMG Consulting 1999, p. 19). Victorian legislation also provides for two restricted categories of hire car licence: Special Purpose Vehicles and Restricted Hire Vehicles. Neither of these categories is able to compete substantially with taxis.

There are other regulatory restrictions that are also likely to constrain hire cars' ability to compete with taxis in providing pre-booked and telephone despatch services. Some jurisdictions regulate minimum fares for hire cars (contrasting with the regulated maximum fares that generally apply to taxis). In Tasmania, hire cars have a regulated minimum fare of twice the standard taxi detention rate (approximately $40 per hour) and a minimum hire period of one hour. In Western Australia, there is no limit on the number of hire car licences and no substantial entry cost, but there is a requirement that hire car charges are at least 30 per cent higher than the taxi detention charge.

There is no fare regulation for hire cars in Victoria or the ACT. Evidence presented in the NCP reviews in these jurisdictions suggests that hire car rates are at some premium to taxi fares, but that the premium is generally small. The proportion of hire cars in the total small chauffeured passenger vehicle fleet in Victoria and the ACT (about 12 per cent and 9 per cent respectively) is substantially higher than in jurisdictions where fares are regulated. In New South Wales, for example, permanent unrestricted hire car licences represent only 5.6 per cent of the total small chauffeured passenger vehicle fleet.[14] The regulated fare restrictions appear therefore to have a direct, substantive impact on the ability of hire cars to compete with taxis; they reduce the ability of hire cars to compete in the more price-sensitive segments of the market.

Most jurisdictions also require hire cars to be of higher quality than taxis. This requirement limits the ability of hire cars to compete with taxis, by potentially ruling them out of the more price-sensitive segments, such as pre-booked and telephone despatch services. The impact of these restrictions is likely to be most significant where other entry costs, such as the hire car licence fee, are low.

In the absence of restrictions on the type of service provided, fares and vehicle quality, hire cars may be able to provide a lower cost service than taxis in some contexts. The substantially lower value of hire car licences (approaching zero in some jurisdictions), compared with taxi plate values, would provide a significant cost advantage for hire car operators. Some reviews have for example estimated that the cost of servicing the capital expenditure needed to purchase a taxi licence accounts for one quarter or more of taxi costs.

[14] That is, permanent unrestricted hire car licences as a proportion of the total number of permanent unrestricted hire car licences plus standard taxi licences.

Economic factors in taxi and hire car markets

In some markets, the absence of regulatory restrictions on competition may not mean effective competition because of market failures or externalities.[15] Market failures or externalities may arise in the supply of taxi and hire car services because of the importance of network effects. Network effects arise because providing an effective and reliable taxi or hire car service can depend on the coordination of a minimum number of vehicles to ensure adequate response to requests across the geographic spread of the market.

Network effects are probably significant in all taxi and hire car services, but are likely to be especially important in telephone despatch services. Unless available cars are relatively close to the requested pick-up location, there will be delays in providing 'on demand' services. Such delays substantially limit the ability of the network to compete in those areas of demand, such as the business sector, in which timeliness is a critical element of service quality.

The member vehicles of a despatch network that falls below a critical size will also experience a substantially increased proportion of unproductive time and distance. The result will be a higher cost structure (that is, a higher effective cost per hire), due to lower income to defray fixed costs and higher variable costs per dollar revenue. Inevitably, the ability of the network to compete on price will diminish. This effect will be felt in both the telephone despatch and pre-booked markets.

Network effects and taxi services

The structure of taxi networks in major metropolitan areas suggests that the 'critical size' for a network may be substantial; that is, declining costs may be experienced over a wide range of network capacity levels, relative to market size.

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[15] Market failures are said to arise where all of the requirements of an effectively functioning market are not present. Examples of market failures include where consumption of a good or service is nonrivalrous and nonexclusionary (that is, one person's consumption in no way impedes another person's consumption and it is not possible to exclude a person from consuming a good or service – known as a public good); where a good or service can only be efficiently provided by one supplier (a natural monopoly); and where there is inadequate information available to support sound decisions about the supply and consumption of products (information failures). Externalities occur where a producer or consumer of a product does not realise all the costs and/or benefits associated with that production or consumption. A network externality is said to be present where linking an additional consumer to a network increases the value of that network to all consumers. For example, a telephone network is more valuable to all users when it can be used to access all other phone users. The presence of network externalities tends to increase the viable scale of production, reduce the number of producers and thus reduce the scope for competition in the market. In extreme cases, network externalities can create natural monopolies because the minimum viable scale of production exceeds the size of the particular market.

The New South Wales NCP review report notes that there are three networks in Sydney; Taxis Combined Services (with a 71 per cent market share), Premier Cabs (17 per cent) and Legion Cabs (12 per cent). Taxis Combined Services is a bureau service, where member companies retain their own management, calls are answered in the name of the cab company whose number was dialled and jobs are despatched in the first instance to that company's network. If these jobs are not taken up within a given time, they are made available to cabs from the other member companies of the network (IPART 1999b, p. 70).

The Victorian NCP review report also provided evidence on the influence of network effects. It concluded that 'economies of scale in network operation appear to have led to a rationalisation of service mainly to two major Metropolitan networks, which provide bureau services to other depots' (KPMG Consulting 1999, p. 33). Reviews in other jurisdictions indicate similar impacts on market structure.

As a consequence of network effects, the provision of taxi services throughout Australia is oligopolistic or monopolised, even in the largest metropolitan markets. In smaller markets, taxi services are probably natural monopolies. These natural characteristics in the provision of taxi services are unlikely to change with reduced regulation and are therefore likely to continue to constrain competition to some extent. Reduced entry barriers through removal of supply restrictions are likely, however, to increase contestability because new booking and despatch service providers will be more able to attract vehicles to their networks. Alternatively, increased availability of hire cars may enable new booking and despatch service providers to compete by coordinating a mix of taxis and hire cars.

Network effects and hire car services

Evidence suggests that most hire cars operate as small businesses with very limited networking. In Victoria, where there are 508 hire car licences (excluding Special Purpose Vehicles), there are 361 hire car businesses of which 315 are in Melbourne. These are mostly small businesses, each operating on average one or two cars (KPMG Consulting 1999, p. 68). This market configuration is likely to constrain substantially the ability of hire cars to compete with taxis.

Many jurisdictions limit the number of hire car licences that can be owned by one person. This restriction may substantially impede the ability of hire car operators to form networks that reach a critical size. NCP review reports indicate, however, that individuals frequently lease substantial numbers of licences. There are few regulatory impediments to this. Canberra's entire hire car fleet is essentially organised into two groups, despite the restrictions on the number of licences that an individual may hold. This restriction is unlikely, therefore, to prevent hire car networks attaining critical size to allow effective competition with taxis.

In most jurisdictions, a more fundamental regulatory restraint that may explain the failure of hire cars to form substantial networks is the limit on the overall numbers of hire cars. Sydney has only 496 unrestricted hire car licences, of which only 321 are permanent. Given the geographic spread of Sydney and traffic conditions, even if all were organised into a single network, it might still fail to reach critical size. Limits on licence numbers may also exercise an indirect restrictive effect. The historical basis of the hire car industry is in serving pre-booked 'special occasion' services, which still comprise an important part of the demand for hire cars. Given the limited capacity for hire cars to serve new, network-dependent markets, the incentives to form the necessary network structures are likely to be significantly attenuated.

Increasing competition in the taxi and hire car markets

Given the equivalence of the services provided by taxis and hire cars and similar vehicles (chauffeured, on demand, point to point transport), the diversion of demand to providers other than taxis arising from tight supply restrictions on taxis would appear unlikely to have substantial negative effects on the welfare of the community. By contrast, diversion of demand towards other, less effective substitutes (such as scheduled bus and train services, private cars, self-drive rental cars) is likely to reduce welfare substantially.

The analysis in the preceding sections suggests that taxi demand is being diverted to hire cars as well as to other modes of transport as a result of current supply restrictions. To the extent that this diversion of demand is toward substitutes other than hire cars, welfare losses may be substantial. Changes to the regulation of the hire car sector may improve its ability to compete with taxis and thus reduce these welfare losses. To this extent, moves foreshadowed by some governments to reduce regulatory restraints on hire cars have the potential to reduce the net costs of taxi supply restrictions, even without significant reform of taxi licensing regulation.

All jurisdictions have identified the capital value of the stock of existing taxi licences (and, to a lesser extent, of hire car licences) as a substantial impediment to reform. This suggests that to be successful, reform programs must take account of outcomes for plate owners. Increasing the scope for competition by reducing the constraints on hire cars would reduce adjustment costs for the taxi sector. Notwithstanding the approach taken by the Northern Territory, the significance of the plate value issue, particularly in the larger jurisdictions, provides some public interest support for a multi-stage approach to the reform of taxi and hire car regulation.

A multi-stage approach raises a number of issues for CPA clause 5 compliance. The most pressing is ensuring that governments implement their reform commitments over the medium term. The history of taxi licensing reform, suggests a substantial risk that continued lobbying from industry

incumbents will mean that reform initiatives are abandoned or compromised before implementation. Strategies to 'lock in' reform are therefore important to ensure the credibility of multi-stage programs. Such strategies include announcing at the outset the longer-term reform program, making transparent the underlying objectives of the program, setting clear, verifiable performance indicators, and providing scope for monitoring the effectiveness of changes and further development of the program where necessary.

One approach is to incorporate future reforms in legislation at the outset. While many reforms (for example the issue of new licences) can be implemented without the need for legislative change in many or most jurisdictions, enactment of legislation that sets out specific reform commitments provides additional confidence that the reforms will be implemented. Another approach is to identify and implement an overarching policy for the regulation of taxis and hire cars. While most review reports have argued for free entry, governments are unlikely to achieve this in the short run. It may be useful, therefore, for governments to set an alternative, transitional objective to ensure reform processes lead to continuing improvements in community welfare over time.

Elements of these approaches are present in the 2002 Victorian reform package. First, the Government publicly announced the number of licences to be issued annually over the next twelve years. Second, it announced a long term approach to determining entry to the hire car market. Third, it explained that the conditions surrounding the issue of new licences are aimed at breaking the nexus between plate values as a tradable asset and the provision of taxi services to the public. This aim includes a commitment to improving drivers' opportunities to obtain a taxi plate.

The weakness of the Victorian approach is that it does not explicitly account for the likely evolution of demand in the industry. As noted below (in the assessment of review and reform activity by Victoria), demand growth in Victoria is likely to mean that the effect of the new licence issues will largely be to prevent existing supply restrictions becoming more severe. This means that the reforms will not necessarily meet their stated objectives of reducing the imbalance between the demand for and supply of small passenger vehicle chauffeured services. This deficiency could be addressed by framing an overarching reform policy that takes a dynamic approach to improving taxi and hire car availability and services.

One possible model is provided in the Tasmanian NCP review report. The review report noted that under the current legislation the regulator (the Transport Commission) can issue unlimited numbers of new licences wherever market values exceed the 'capped value' established pursuant to the legislation. The commission has however issued no licences to date. The NCP review report recommended removing the discretion, replacing it with a simple formula governing new licence issue. Under the formula, licences equivalent to 5 per cent of existing licences would be issued annually, with a reserve price equal to the market value assessed by the Valuer-General from

time to time. If the average tender price exceeded the reserve by more than 10 per cent, an additional tender would be called.

The formula would be likely to have the effect of capping licence values at the level determined by the Valuer-General. It would therefore prevent further increases in the relative scarcity of taxi licences and thus yield better outcomes than those generally experienced in Australia in recent decades. Moreover, because it would be automatically applied, it would render the licence issue process immune to lobbying by vested interests, while adding considerable predictability to the taxi market. These are important advantages over the ad hoc approach to licence issue in all other jurisdictions.

The 5 per cent figure for new licence issues means that the process is unlikely, however, to do more than prevent greater scarcity problems developing over time. The Tasmanian approach is vulnerable therefore to the criticism that it fails to address the existing problem, although the formula could be modified to deal with this. An amended formula could require new licences to be issued until the average tender price is, say, 5 per cent or 10 per cent lower than the Valuer-General's assessed market value price. This would have the effect of creating a 'sinking cap' on licence values and deliver gradual improvements.

Another way to help ensure sustained reform progress and to reduce the possibility of future lobbying is to confer responsibility for key regulatory decisions on a multisectoral regulator with broad regulatory expertise, at arms length from government. Existing regulatory systems tend not to do this. They generally include substantial areas of Ministerial discretion, together with a regulatory body dedicated to the taxi sector, and as a result vulnerable to 'capture' by the sector. The 2002 Victorian reform program, which gives the Essential Services Commission responsibility for determining the price at which hire car licences should be sold (updating the figure every two years) is an example of using an independent body to implement regulatory objectives and reduce the costs of lobbying by vested interests. Victoria's approach provides a clear basis for the future regulation of hire car entry, and could be usefully extended to encompass the taxi industry.

A more rapid alternative to staged reform is the immediate deregulation of supply restrictions implemented through some form of (possibly partial) buy-back of existing taxi and/or hire car licences. This was the approach taken by the Northern Territory in 1999. The Territory removed restrictions on taxi licence numbers via a buy-back of existing taxi licences at full market prices.[16] The ACT Government is considering options for licence deregulation and buy-back of taxi licences proposed by the ICRC.

Four NCP reviews recommended open entry to the taxi industry achieved via buy-back of existing plates at full market prices. Governments which have

[16] Buy-back prices were determined by taking the price of the last licence sale in a given taxi area and adjusting this amount by the Consumer Price Index.

considered this recommendation have mostly argued that the cost of a licence buy-back at full market prices is prohibitive. Consequently, in the preparation for the 2001 NCP assessment, the Council outlined various scenarios for dealing with reform implementation issues deriving from the high capital values of licences, to show that it is possible to remove supply restrictions at a cost to taxpayers and/or consumers that is within reason, while avoiding hardship and inequity for taxi plate owners (Deighton-Smith 2000).

The Council considers that there are strong equity based reasons for governments to question the presumption that all taxi plate owners have a right to financial assistance equivalent to the full market value of plates where restrictions on licence numbers are removed. Some licences for example were purchased at low cost many years ago and have acquired considerable paper value only because inappropriate supply regulation has contributed to scarcity. People purchasing licences since 1995 (who are likely to have paid the highest prices) did so in the knowledge that governments' reviews of taxi licensing regulation under the NCP might reasonably be expected to lead to removal of supply restrictions. It is notable in this context that none of the four NCP reviews that recommended a licence buy-back at full market price offered a detailed supporting case.

In the 2003 NCP assessment, the Council will look for governments to have adopted credible reform programs. Where governments adopt a staged approach to licensing reform rather than immediate deregulation, the Council will look for a high degree of certainty that all stages of the reform will be implemented within a reasonable period. Reforms need to address, in particular, the dynamics of supply and demand, and involve mechanisms that avoid the problems of regulatory capture, inconsistent outcomes for different types of service providers and unpredictability that have historically characterised regulation.

NCP review and reform activity

All robust NCP reviews of the taxi and hire car industry have found that the extent of current supply restrictions is too great, while a majority argued for the complete removal of supply restrictions other than those restrictions based on quality considerations. Many reviews attributed substantial net costs to the existing supply restrictions.

At the 2001 NCP assessment, only the Northern Territory had implemented significant reform. The Territory removed all restrictions on taxi supply in January 1999. Despite all jurisdictions but one having completed their reviews for at least two years (and some for almost three years), there has been little change since the 2001 NCP assessment. The major developments are the announcement of a package of reforms in Victoria and the conduct of a supplementary review in the ACT. The Northern Territory backtracked by

imposing a temporary (12 month) moratorium on the issue of new licences in November 2001 to assist the taxi industry to adjust to deregulation. It has also released a discussion paper (May 2002) foreshadowing a possible partial re-regulation.

Some governments argued they have implemented 'most' review recommendations, apparently suggesting they have achieved a degree of compliance. These changes have not, however, encompassed the predominant NCP question of supply restrictions. Some governments have emphasised surveys of 'performance standards' and/or 'consumer satisfaction', apparently to demonstrate that taxi supply is sufficient to meet consumer demand. These arguments fail to recognise that high levels of performance can co-exist with substantially above-equilibrium prices, due to supply constraints. Moreover, consumer satisfaction is being measured in a context in which consumers have no experience of an unrestricted market. The central question that governments need to address to satisfy CPA clause 5, therefore, is whether there are net public benefits from the current supply restrictions.

New South Wales

New South Wales's NCP review, undertaken by the IPART, was completed in November 1999. The review report concluded there is 'little benefit in terms of passenger service in restricting the number of taxi licences'. It recommended that the Government adopt a transitional approach to reform involving the immediate deregulation of the hire car sector, a 5 per cent annual increase in the number of taxi licences each year from 2000 to 2005 and a further review in 2003 (IPART 1999b).

The Government has taken a number of steps toward implementing the measures recommended by the IPART. By mid-2001, it had released 60 new limited term (six year) licences and 120 new Wheelchair Accessible Taxi licences (New South Wales Government 2001). The Government has provided no information however about any subsequent releases of licences. It is currently negotiating with the industry about a process for the staged release of new general and special licences and the introduction of a public interest test to expedite the licence approval process (New South Wales Government 2002, p. 6). New South Wales has also taken steps to ease the constraints on operators of hire cars. While it has not implemented the review recommendation to remove quantitative restrictions on licences, it has reduced the fee for annual licences by almost 50 per cent, from $16 100 to $8235, and committed to review the fee in September 2003.

Assessment

The IPART review report concludes that supply restrictions are not in the public interest, and that the goal for New South Wales should therefore be to remove them. In this regard, the recommended transitional approach represents only a first step. Given that the review estimated that demand for

taxi services would grow at an average rate of 5 per cent per year, annual increases in the number of taxi licences of 5 per cent will do little to alleviate the existing imbalance between the demand for and the supply of taxi services.

New South Wales has indicated it supports the approach recommended by the IPART. It has taken only limited steps towards implementation, however; the available information suggesting it has issued only 180 new licences since 2000 (less than half the number that would have been issued if the IPART transition were being implemented in full). The Government has reported limited take up of new licences and that some licences have been handed back to the Department of Transport. It has attributed this to a decline in travel generally since 11 September 2001 and the collapse of Ansett Airlines. The Council considers that a more likely explanation for the limited take up is the restricted nature of the licences offered and the terms for the sale of the licences, including imposing a reserve price. The reported lack of interest does not appear to be observed in relation to unrestricted plates, for example, which continue to trade at more than $250 000.

The Council is also concerned that the negotiations with the industry in relation to the staged release of new licences may be a cause of further delay. The Government has not explained the purpose of these negotiations, or why they are yet to produce a more substantial outcome some three years after the NCP review, or even indicated when the negotiations will be finalised. The purpose of introducing a 'public interest test' to expedite the licence approval process is also not apparent, given that the clear finding by the IPART that licence restrictions are not in the public interest.

New South Wales is also still to implement the IPART recommendation to remove quantitative restrictions on hire car licences. It has reduced the annual licence fee, which is likely to lead to substantial new entry, although the extent of entry may be less than the size of the fee reduction would suggest because the previous fee was well above the market rate for leasing an existing 'permanent' licence.[17] New South Wales currently has the smallest number of hire cars relative to population of all jurisdictions, and a substantial increase in their number could help alleviate current shortages in the supply of taxi services. The Government's review of the fee in September 2003 provides a further opportunity to ensure that the hire car annual fee is set at a level that facilitates entry.

The Council considers that New South Wales is yet to comply with its CPA clause 5 obligations in relation to taxi supply restrictions. While the Council acknowledges that New South Wales has expressed its commitment to the IPART transitional model (which the Council sees as a first step toward the

[17] The Council understands the market rate for leasing a permanent licence to have been approximately $12 000–13 000 per year prior to the change to the Government's annual fee.

objective of removing supply restrictions), New South Wales is yet to implement it in full. The Council will therefore review New South Wales's compliance with CPA clause 5 obligations in relation to taxis and hire cars again in the 2003 NCP assessment. While the Council does not expect any government to remove all restrictions on taxi supply immediately, it will look for significant progress by New South Wales toward this objective by 2003, given the IPART finding that supply restrictions offer no net benefit in the longer term. The Council notes that the New South Wales Government has committed to work with it to progress the implementation of reforms before the 2003 NCP assessment.

Victoria

Victoria completed its NCP review of restrictions on taxi licensing in July 1999. The Victorian NCP review, by KPMG Consulting, calculated that existing taxi supply restrictions cost consumers $66.1 million per year and lead to $6 million per year in deadweight losses to the economy. It recommended the removal of all restrictions on the number of taxi and hire car licences and a buy-back of existing licences at full market value (KPMG Consulting 1999, p. 152).

The Victorian Government released its taxi and hire car industry reform package in May 2002. This is the only substantial reform package — involving the release of significant numbers of new taxi licences — announced by any jurisdiction other than the Northern Territory. The key points of Victoria's reform program are:

- the release of 100 new 'peak period' taxi licences, of six year duration, annually for the next twelve years;
- the conversion of 50 'peak period' licences annually into full licences, from years 7 to 12 of the reform program;
- the removal of the 'public interest test' and the need for a 'business case' for applications for hire car licences;
- making new hire car licences available at a price of $60 000 (about 10 per cent greater than the market price in 2001) reviewed two-yearly by the Essential Services Commission;
- a 20 per cent surcharge on taxi fares between 1 a.m. and 6 a.m. (with 100 per cent of the surcharge retained by taxi drivers); and
- the introduction of accreditation for licence-holders, taxi depots and networks.

The reforms should increase the total number of taxi licences in Victoria by almost 46 per cent over 12 years, from 3272 in 2002 to 4773 in 2014. The surcharge, and particularly the requirement that drivers retain the full amount, is intended to encourage drivers to make themselves available at

times when the imbalance between the demand for and supply of taxis is greatest, although the Victorian NCP review cast doubt on whether the lack of cabs at these times is related to driver availability (KPMG Consulting 1999, p. 66). There may also be increases in the number of hire cars, although Victoria has not estimated the likely increase in this area. The reform package, by providing for regular performance monitoring and public reporting of the results of this monitoring, is likely to provide continued pressure for change in the event that imbalances between the supply of and demand for taxi services continue.

As its announcement of reforms to licensing restrictions indicates, the Victorian Government accepts that increases in the supply of taxi licences are necessary to meet the demand for taxi services.[18] The Government is adopting a gradualist approach to increasing supply, in preference to an immediate buy-back of licences and removal of supply restrictions (as recommended by its NCP review). It considers a gradual approach to be preferable for two reasons; first because it removes the need to buy back taxi plates (which would otherwise constitute a substantial budgetary cost) and, second, because it will minimise the cost of the industry adjusting to less restricted licensing arrangements.

Impact of the reform package

The effectiveness of Victoria's reform package in addressing imbalances between the demand for and the supply of taxi services depends critically on the future growth in demand for taxi services. Although the Government does not appear to have estimated future demand, it is possible to make some projections from the evidence in Victoria's NCP review report, which contains data on taxi use between 1983 and 1998 (KPMG Consulting 1999, p. 27). While the number of trips declined over this period, there was a substantial increase in the length of trips. Demand for taxi services over the period, measured in passenger kilometres travelled, increased by almost 57 per cent,[19] equivalent to an average annual growth rate of 3 per cent. Applying this estimated historic growth rate to future demand suggests that passenger kilometres travelled by taxi in 2014 will be some 43 per cent higher than in

[18] The current price of taxi licences suggests that there is a significant imbalance between the demand for and the supply of taxi services. The price of a taxi licence in Melbourne has been increasing in recent years and is currently about $330 000, higher than in any other jurisdiction.

[19] Victoria's NCP review used data from Public Transport Corporation annual reports, the 1987 Foletta Report on the taxi industry, the Victorian Taxi Association submission to the NCP review and from KPMG to derive passenger kilometres travelled by taxi between 1983 and 1998. These data are presented in table 2.1. (Table 2.1 reports that passenger kilometres travelled by taxi were 95.8 per cent higher in 1998 than in 1983, which may be an error.)

2002.[20] Given that the Victorian reform package will see the number of taxi licences increase by about 46 per cent over the same period, the relative balance between the demand for and the supply of taxi services may remain relatively unchanged.

The overall impact of the reform package will also be influenced by changes to the regulation of hire cars, and their capacity to satisfy part of the future demand for taxi services. The two substantial changes that will affect hire car numbers are the removal of the public interest requirements that must be met by licence applicants and the change in the way in which the prices of hire car licences are set, from the current administrative cost basis to a market price basis.

Victoria's NCP review indicates that, currently, almost two thirds of licence applications are rejected because applicants cannot satisfy the public interest test. Some 90 applications for hire car licences were rejected in the three years from 1995, with the result that there were at most only 15 per cent more hire car licences in 1998 than there were in 1995 (KPMG Consulting 1999, pp. 20 and 43).[21] This suggests that removing the public interest test should increase the rate of new entry. Conversely, the change in the price of a hire car licence — effectively an increase from a nominal 'administrative cost' based fee to $60 000 (about 10 per cent greater than the 2001 market price) — will reduce entry. Indeed, in a comparative static sense, the equilibrium amount of entry at $60 000 will be zero. In practice, it can be expected that there will be some entry, perhaps by unsophisticated investors. This will lead to a period of sub-normal returns and some decrease, over the medium term, in the average market price of a licence.

Victoria's success in inducing new entry by hire car operators will depend on the approach the Essential Services Commission takes in its two-yearly adjustments to the price of new licences purchased from the Government. If it adopts a 'market price' based approach, as the Victorian Government's current policy suggests it should, entry levels are likely to be relatively low. If, however, it takes the view that the Government's policy is intended to favour new entry and increased competition in the medium term, it may consider a lower price to attract more rapid entry. If it adopts this approach, it could enhance the prospect of substantial hire car entry in the medium term.

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[20] The estimated 3 per cent average annual increase in the demand for taxi services is likely to be conservative. Annual real growth in gross domestic product in Australia over the last decade was 4 per cent, substantially higher than the rate of growth in the 1980s and early 1990s.

[21] The number of hire cars in 1998 may have been no more than 8 per cent more than in 1995. The review report cites differing data on hire car numbers.

Assessment

The Council acknowledges that the Victorian Government's reform package represents the only substantial set of reforms to be announced in any jurisdiction other than the Northern Territory. The reforms should, at a minimum, prevent the net costs to the public of current taxi regulation increasing significantly in future. Moreover, the package takes a long term view and considers both taxi and hire car reforms simultaneously. In these aspects, the Victorian Government is well ahead of most other governments.

There is nonetheless a substantial risk that the proposed reforms may not materially improve the current supply/demand imbalance with regard to taxi services in Victoria. Improvement will occur only if the annual growth in demand for taxi services is substantially lower than 3 per cent and/or if there is substantial new entry by hire car operators. Unless these conditions hold, the current supply/demand imbalance could worsen, despite the reforms. Thus, the Council cannot be confident that Victoria's reforms, as they are currently formulated, will satisfactorily address future demand.

The Council proposes to continue dialogue with the Victorian Government in the period to the 2003 NCP assessment. In this context, Victoria has undertaken to provide more detailed information on how its reform package will operate. The Council will look to Victoria to closely monitor the effectiveness of its reforms in encouraging new entry. Monitoring might suggest, for example, that changes in the rate and terms of taxi licence releases and to the regulation of hire cars are warranted. In the 2003 NCP assessment, the Council will look for indications that Victoria is taking into account dynamic changes in the supply and demand conditions of the industry and is focusing its regulatory arrangements accordingly. The Council will also consider whether the strategy of relying on fixed (6 year) duration licences, as opposed to permanent licences, risks reversal of the reforms (in whole or in part) by some future government and how such risk if any can be minimised.

The Council considers therefore that Victoria is yet to fully meet its CPA clause 5 obligations relating to taxi and hire car licensing. In the 2003 NCP assessment, it will seek to confirm that the longer term objective Victoria is seeking via its 2002 reforms is the removal of supply restrictions within a time period that will deliver measurable community benefits. Further development of the reform model in line with this objective, particularly to respond to any evidence of continuing undersupply of taxis revealed by performance monitoring, could lead to a positive assessment of Victoria's compliance with CPA clause 5 obligations in the future.

Queensland

Queensland publicly released the report of its NCP review of the *Transport Operations (Passenger Transport) Act 1994* in September 2000. This Act

governs the operation of taxis, limousines and regulated bus and air services. Regarding taxi licence restrictions, the report rejected full deregulation of supply, arguing that it would increase the costs of many trips, particularly to outlying areas and airports and that it would also substantially reduce the supply of Wheelchair Accessible Taxis (Queensland Government 2000).

The drafting of the review report is unclear, and it is difficult to determine the precise nature of the report's recommendations. The general view appears to be, however, that taxi service companies should have at least partial control over licence numbers, including preferential access to new licences issued. The review report itself acknowledges such an approach would be anticompetitive. For hire cars, the review report recommended that licences be issued on demand at a price (either one-off or as an annual fee) that 'reflects the value of licences'.

Queensland has not announced a substantive response to the review report. The Cabinet has directed the Department of Transport to prepare specific policy proposals for the Government's consideration after completing consultation on the review report. The main focus of the consultation and policy development is on measures to enable booking companies more flexibility and responsibility in controlling the resources they need to provide taxi services, while at the same time ensuring minimum standards are maintained (Queensland Government 2002, p. 7).

Assessment

While there is necessarily a degree of uncertainty due to the Queensland review report's lack of clarity, there is considerable doubt as to whether the report's analysis is adequate to justify its recommendations. The assumptions underlying the report's recommendations, and the methodology on which the report has based its conclusion that there are likely to be benefits from retaining supply restrictions, are not clear. It is also difficult to determine from the report precisely what regulatory model is proposed. The review report, therefore, does not provide a strong public interest case for restricting taxi supply, nor does it offer an approach to regulating taxis and hire cars that satisfactorily addresses competition principles.

The Government's request to the Department of Transport to prepare specific policy proposals on the basis that taxi companies be permitted more flexibility and responsibility in controlling the resources they need to provide taxi services suggests the Government accepts the general recommendation to retain supply restrictions. Queensland has not however presented a strong public interest justification for such as approach, nor has it demonstrated that allowing incumbent taxi companies control over future licence releases is in the public interest. Its case for retaining restrictions comprises a list of problems, which it claims have been experienced 'elsewhere' when fares and entry have been fully deregulated (Queensland Government 2002, p. 8). These claims are unsupported by any citation of specific data or cases.

The Council considers that Queensland has not complied with its CPA clause 5 obligations regarding legislative restrictions in taxi and hire car legislation. The Queensland Government is, however, still developing its policy approach and has indicated to the Council that it is prepared to implement a less restrictive approach based on successful reform models implemented in other large jurisdictions in Australia. The Council will progress this work with the Queensland Government over the period to the 2003 NCP assessment.

Western Australia

Western Australia has completed a review of its *Taxi Act 1994*. The review was conducted by a steering committee of officials. The steering committee let two consultancies, whose reports formed the substantive basis of the steering committee report and recommendations to Government. These consultancies were:

- a review of the Taxi Act by BSD Consulting, Economics Consulting Services and Estill and Associates Pty Ltd (BSD); and
- a survey of public opinion on the industry, and what aspects of it need improvement, by the Boshe Group.

The BSD review report provided a detailed analysis of the net costs of licence restrictions and the likely benefits of reform. It found restrictions on the supply of licences should be removed, with existing licences bought back by the Government at full market value. The Boshe Group opinion survey indicated a high level of consumer satisfaction with current taxi services. The survey reported that 93 per cent of consumers rated the service at the time of their most recent taxi ride as good or very good, although 18 per cent were able to identify something 'particularly bad' about their last trip. By contrast, the BSD report presented evidence that use of taxis for business purposes has fallen by almost two thirds in less than a decade, suggesting a substantial level of dissatisfaction at least within this part of the market.

The steering committee did not endorse the BSD report recommendation that the Government remove restrictions on plate numbers and buy back licences. Rather, the committee took what it described as a 'conservative' view on supply restrictions. It recommended that 50 new wheelchair accessible taxi licences and 100 new peak period taxi licences should be put to tender, and that an advisory group should monitor the effect of the additional licences and the other reforms, focused on performance standards, implemented following the review. The steering committee's recommendation provides, therefore, for the merits of removing supply restrictions to be reconsidered (via the advisory group) following the implementation of the initial reforms.

Western Australia has only partially implemented the steering committee's recommendation. In early 2000, the then Government released via tender 25 wheelchair accessible taxi licences and 100 perpetual peak period licences.

There were significant restrictions placed on the peak period licences; they can be used only between 5 p.m. and 6 a.m. on Friday and Saturday nights, and are not transferable. Despite the minimum tender price being $1000, only 35 licences were taken up. The limited take-up presumably reflects the significant restrictions placed on the licences. In addition, the Council understands that there was diminished confidence in the industry at the time of the tender. The Government has not conducted a further tender.

The current Government, while not supporting 'wholesale deregulation', stated that it recognises a public interest case for a buy-back of taxi plates. It saw a plate buy-back as offering 'the opportunity to reduce the high cost structures in the industry and reduce driver lease fees'. In 2001, the Government undertook to establish a Ministerial Task Force to 'look in detail at the feasibility of a plate buy-back and develop an approach that is fair to taxi plate owners and provides benefits to taxi drivers and taxi customers' (Department of Treasury and Finance, Western Australia 2001, p. 10). The task force proposal did not proceed. Instead, Western Australia is to convene an 'industry forum' to discuss plate buy-back. No timeframe for the forum has been announced. The advisory group recommended by the steering committee has not been established.

Western Australia is one of only two jurisdictions that allows free entry to the hire car industry, with licence fees limited to $4.75 per year per seat. There are, however, a number of regulatory restrictions that constrain the ability of hire cars to compete with taxis. Chief among these are the requirement (found in all jurisdictions) that hire cars accept only passengers who book in advance by telephone, the requirement that bookings be of a minimum one hour duration, and that the fee be at least 30 per cent higher than the taxi detention charge. The review did not propose any changes to these arrangements.

Assessment

The steering committee report endorsed many of the findings of the BSD review report. It recognised that restricting supply adds significantly to average fares, which constitutes a 'powerful argument' for removal of the restriction on supply. It also agreed with the consultants that 'the current restrictions on plates result in a sub-optimal number of taxis.' Moreover, it accepted that 'the consultants have developed a good public interest argument in support of removing the restrictions on plates'. Despite these comments, the steering committee did not support deregulation of licensing restrictions, opting instead for the release of a limited number of new licences. The committee's major concern — which is supported by the Western Australian Government — is that the cost of buying back existing plates means that immediate deregulation is not feasible.

Western Australia released 60 new licences some two years ago, equivalent to approximately 6 per cent of the existing number of licences in the Perth area, whereas the steering committee had recommended the release of 150 new licences (or 15 per cent) and a subsequent review of whether the release of

more licences is warranted. Western Australia appears to have made no attempt to address the limited take-up of licences in 2000, for example by relaxing the restrictions attached to the peak period licences to make them more attractive and conducting a further tender. The failure to address the constraints on hire car operations, noted above, also prevents hire cars providing increased competition with taxis, notwithstanding the open entry regime in place.

Western Australia has also not adopted the recommendation by the steering committee for further expert and independent advice on supply restrictions following the initial reforms. In this regard, the Council considers that the Government's proposal for an industry forum may not be the best way to evaluate the community benefit from further relaxation of supply restrictions. There is a considerable risk that such a mechanism would see the overall community interest subsumed by the interests of the industry.

Given the above, the Council considers Western Australia has not yet complied with its CPA clause 5 obligations relating to the Taxi Act. The Council acknowledges, nonetheless, that Western Australia has made a start to improving the supply of taxi services, albeit limited, by releasing 60 new licences. The advisory group proposal, were it to be implemented, would enable objective consideration of the merits of further reform. Further, in meetings with the Council, the Western Australian Government has indicated a desire to introduce some changes, particularly aimed at improving driver remuneration and career opportunities. The Council expects to continue dialogue with the Western Australian Government on these issues in the period to the 2003 NCP assessment.

South Australia

The South Australian review by Bronwyn Halliday and Associates reported in November 1999. The review report concluded that there is no need to change the *Passenger Transport Act 1994*, which governs the issue of taxi licences, because the Act allows the Minister a discretionary power to issue up to 50 new licences annually. The review report noted that this is equivalent to about 5 per cent of current licences. It considered that an annual rate of growth in licence numbers of 5 per cent would be sufficient to improve the availability of taxis over time, given the relatively low growth in demand for taxi services in the State. The review report was publicly released on 8 November 2000, and is being considered by the Minister for Transport and Urban Services (Government of South Australia 2002, p. 35).

South Australia deregulated its hire car licensing arrangements in 1991, allowing free entry subject to the payment of fees which are currently set at $248 for operator accreditation and $1110 per vehicle. These are the fees applying to the category of hire car which most closely competes with taxis. Called 'SPV Metropolitan', these cars travel more than 40 000 kilometres a

year and accept fares of less than $20. Other categories of hire car also exist, but these compete far less directly with taxis.

Hire cars, particularly of the SPV Metropolitan category, can therefore compete with taxis to provide chauffeured passenger services where the hire car is booked in advance over the telephone. There is some evidence, however, that other obligations placed on South Australian hire car operators reduce their capacity to compete with taxis. Victoria's NCP review considered that:

> ...*the* [South Australian] *Passenger Transport Board, which was established in 1994, has used its regulatory powers to dampen competition, for example requiring applicants for accreditation to produce 'business plans'. It is widely believed that business plans that present the service as competing with taxi-cabs will be frowned upon.* (KPMG Consulting 1999, p. 138).

Assessment

Despite the discretion available to the Minister, there have been no general taxi licences issued since 1 January 1999. South Australia removed hire car licence restrictions in 1991; despite this the value of taxi licences continued to increase until 1998, when they peaked at approximately $160 000.[22] The most likely explanation for the Minister's failure to use the discretionary power in the Act is, as the NCP review report recognises, that 'rent seeking behaviour on behalf of the existing licence holders tends to pressure the system into a status quo situation' (Bronwyn Halliday and Associates 1999, p. 71). This suggests it is likely that the discretionary process will continue to fail to ensure an adequate supply of taxi services.

Despite recognising that existing licence holders inevitably seek to protect their own position (suggesting this is the likely reason for no new issue of taxi licences) the NCP review did not recommend changing the discretionary arrangement. It raised an argument that removing supply restrictions may reduce the supply of taxis, because new entry would drive down profitability for all players, which 'could result in operators leaving the industry' (Bronwyn Halliday and Associates 1999, p. 58). The review made no attempt to reconcile this suggestion with the experience of substantial supply increases in markets such as New Zealand and Ireland following the removal of supply restrictions in those countries. In addition, the review report's acknowledgement of the need for additional taxi licences if current demand/supply imbalances are to be addressed (despite pointing to low demand growth), together with its recognition of the industry and regulatory dynamics that tend to prevent new release, appears to contradict the conclusion that no change to the legislation is necessary.

[22] While there was a substantial decline over the next two years, the most recent data available – for May 2002 – indicate that the licence value is now around $150 000.

The South Australian Government's argument that the deregulated hire car sector provides a substantial level of competition to the taxi sector in South Australia (reducing the need to increase the number of taxis) is not supported by the available data. South Australia's removal of entry restrictions saw an initial increase in the number of hire cars but numbers have now stabilised; approximately 100 vehicles serve the metropolitan market (Passenger Transport Board 2000, Attachment 3). There are 991 taxis in Adelaide, meaning that the 100 SPV Metropolitan category hire cars, which compete directly with taxis, constitute about 9 per cent of the total supply of small chauffeured passenger vehicles. In Victoria, where there are 508 hire cars and 3898 taxis, hire cars constitute almost 12 per cent of total supply. Further reform to remove remaining regulatory impediments to hire cars would appear to be required in South Australia if its policy of free entry to the industry is to have the effect desired by the Government.

South Australia's failure to use the discretion in the Passenger Transport Act to allow new entry (and thus to ensure a balance between supply and demand) means that the mere existence of the legislative discretion is not sufficient for compliance with CPA clause 5 obligations. In this context, a guarantee that the discretion will be exercised whenever certain supply-based criteria are met, or replacement of the discretion with a mandatory release arrangement as Tasmania's review has proposed (see below), would be a valuable step forward. In discussions with the Council, the South Australian Government has undertaken to look at possible mechanisms for addressing restrictions on the availability of taxis. The Council will pursue arrangements for improving the supply of taxis with South Australia over the period to the 2003 NCP assessment.

Tasmania

An independent review group reviewed *Tasmania's Taxi and Luxury Hire Car Industries Act 1995* during 1999, providing a final report in April 2000. (The Act was previously known as the *Taxi Industry Act 1995*, but was amended late in 1999 to include the licensing of luxury hire cars.) The review group made recommendations for changes to the licensing arrangements for both taxis and hire cars.

Tasmania's Act allows the Transport Commission to issue unlimited new licences whenever the value of a licence in a given area exceeds the 'capped value' set by regulation. The Tasmanian review proposed modifying this arrangement to eliminate the discretion over the issue of new licences. Noting that the Transport Commission had issued no new licences since 1995, when the current Act came into effect, the review recommended that the Act require the issue of new licences annually via tender (5 per cent of existing licences), subject to a reserve price set by the Valuer-General. If average tender prices exceed this valuation by 10 per cent or more, an additional tender would be called. In relation to hire cars, the review recommended that these be issued by the government for a one-off fee of $5000.

Tasmania's review coincided with the proclamation of the Taxi and Luxury Hire Car Industries Act. The Act removed a number of pre-existing restrictions on the operation of hire cars, notably a regulated minimum fare of $40. At the same time, it imposed a one-off fee of $5000 for a hire car licence, whereas these had previously been available at a price that represented administrative cost recovery. Under the 1999 Act (proclaimed in 2000), hire car licences are issued as of right, subject to payment of the $5000 fee. The legislation contains no fare controls. Hire cars remain formally limited to pre-booked work, although it is understood that they compete strongly with taxis at airport terminals, due to the 'pre-booking' occurring inside the taxi terminal, while hire cars wait outside.

Little quantitative information is available on the impact of these changes to the hire car industry. Tasmanian officials stated that new entry has been extremely limited (numbers are estimated to have increased from 40 to 44 in the two years since the Act came into force). It is believed, however, that the quantity of work being undertaken by each hire car has, on average, increased substantially. Thus, it appears possible that changes to hire car regulation have increased competition within the taxi and hire car industry.

The recommendations of the Tasmanian NCP review essentially endorsed the approach taken to hire cars in the 1999 Act. In relation to taxis, the Tasmanian Government was expecting to have considered the review's recommendations by mid-2002 (Government of Tasmania 2002, p. 7), but had not done so by the time of this assessment.

Assessment

The model for the issue of new licences proposed by the review would be a considerable improvement on the current arrangement because it would remove the current regulatory discretion over new licence issues. At a minimum, the reform would prevent any further increase in the relative scarcity of taxis. In addition, the adoption of a formula-based approach would offer scope in the future for further improving the supply of taxis via adjustments to the formula over time.

The regulatory arrangements for hire cars appear to have improved the ability of hire cars to compete with taxis, although the extent to which this has occurred is difficult to determine. The review group regarded the $5000 licence fee as being able to 'assist in preventing the undermining of the taxi industry that may occur from unrestricted entry.' This would suggest that the low rate of entry apparently experienced was an intended result of the changes made. However, to the extent that the turnover of each hire car has increased due to diminished restrictions on their operation, it is plausible that the change has had a substantive impact.

Although Tasmania's legislation contains a discretion providing for the release of additional taxi licences, there has been no new issue of licences since 1995. The Government is still to respond to the recommendation of the State's taxi review group that the discretion be replaced with a provision

requiring the annual auction of new licences. Moreover, the formula that Tasmania is currently proposing for governing the release of taxi licences is unlikely to reduce the existing scarcity of taxi licences. Given these circumstances, Tasmania cannot be considered to have met CPA clause 5 obligations relating to taxis and hire cars. Tasmania has however undertaken to work with the Council during 2002-03 to progress taxi licensing reform, and the Council will look for progress in these areas over the period to the 2003 NCP assessment.

The ACT

The ACT review, completed in March 2000, recommended that supply restrictions be removed and that there should be a buy-back of existing licences at market value (Freehills Regulatory Group 2000). It also recommended the removal of all restrictions on hire car licence numbers.

The ACT Government announced a response to the review in December 2000, outlining its preference for a transitional approach to licensing to provide 'certainty and benefit to the industry and consumers' (Smyth 2000). The first stage of the transition involved the issue of 10 new Wheelchair Accessible Taxi licences and moves to promote a second taxi despatch network. The Government has also reached an agreement with New South Wales to allow 16 New South Wales taxis to operate in the ACT. The Government stated that it would consider further transitional steps after a second review to be completed in June 2002 (ACT Government 2001, p. 35).

The second review by the ICRC released its final report on 12 June 2002. The review report raised questions about the standard of service provided by ACT taxis. It noted that the service standards for wheelchair accessible taxis were generally not being met and the 85 per cent waiting time requirement for standard taxis (outside the designated 3–6 p.m. Monday to Friday peak) was only just being met. The ICRC review report also noted comments by review participants indicating that the standard of service is inadequate. The Law Council of Australia is reported as stating, for example, that it had hired a coach to transport delegates for a Friday evening conference dinner following waits of up to 90 minutes for booked taxis on previous occasions. The ICRC report also considered there is a case for review of the standard taxi service requirements.

The ICRC report concurred with the recommendation of the Freehills Regulatory Group's NCP review report that supply restrictions on taxi licences should be removed. The ICRC report canvassed three options to assist transition to a deregulated market. Two of these involve partial adjustment assistance for existing plate owners (of up to 80 per cent of the estimated market value) while the third involves no compensation. The ICRC stated that it supports 'some form of adjustment assistance for existing plate holders' (ICRC 2002b, p. 43). The ACT Government advised that it is

considering the ICRC recommendations and will respond on the issue of reform of the industry as soon as possible.

The ACT has not advanced the NCP review recommendation to remove all restrictions on the operation of hire cars. The ACT Legislative Assembly deferred any implementation of reform prior to the completion in 2001 of a Standing Committee Report on taxis and hire cars. The ICRC report supports the Freehills Regulatory Group's NCP review in recommending the removal of restrictions on the supply of hire car licences.

Assessment

The ICRC report's central recommendation to remove restrictions on the supply of taxi and hire car licences is consistent with the recommendation of the original NCP review. Action by the ACT Government in line with this recommendation would address the ACT's CPA clause 5 obligations.

The ICRC report also contains proposals on how the Government might assist industry adjustment to a deregulated market. The decision on whether there is to be adjustment assistance, and if so the appropriate level of assistance, is a matter for the ACT Government. It is not relevant to the assessment of the ACT's compliance with CPA clause 5.

The ACT has not announced a decision on the ICRC recommendations and so is yet to comply with its CPA clause 5 obligations relating to taxi licensing. The ACT is also still to implement the recommendations of its NCP review to remove all restrictions on hire car licence numbers. The Council acknowledges, however, that the ACT Government has only recently received the final ICRC report and that it has the recommendations of the report under active consideration. The Council will look for a substantive response to the ICRC report's recommendations in the course of assessing the ACT Government's compliance with its CPA clause 5 obligations in 2003.

The Northern Territory

The Northern Territory removed its restrictions on taxi and hire car licence numbers in January 1999. The Territory implemented the change via a buy-back of existing taxi licences at full market prices.[23] The Territory applies an annual taxi licence fee ranging from $4500 to $16 000, depending on the taxi area and a hire car licence fee of $1000 per annum plus an initial one-off payment of $10 000.[24] The Council considered in the 2001 NCP assessment

[23] The market price was determined by taking the price of the last licence sale in a given taxi area and adjusting this amount by the Consumer Price Index.

[24] The annual licence fee for a Wheelchair Accessible Taxi licence is half that for a general taxi licence.

that the Northern Territory's actions complied with obligations under CPA clause 5.

Subsequent to the 2001 NCP assessment, in November 2001, the Northern Territory Government imposed a temporary (six month) cap on the number of minibus, private hire car and taxi licences, with the exception of Wheelchair Accessible Taxis. The Government later extended the cap to December 2002, explaining that the cap is needed to assist the industry in adjusting to deregulation. The Government also announced a review of the regulatory framework to ensure a 'sustainable high quality service to the Northern Territory public and the tourism industry', releasing a discussion paper for this review in May 2002.

Assessment

The Northern Territory's 2002 discussion paper proposes a number of policy directions that suggest a potential for the introduction of arrangements that may restrict competition. The most significant of these are a proposal to transfer key regulatory powers to a board, which will have the role of advising the Government on the composition and size of the industry, and a proposal that public access hire car fares be at least 30 per cent higher than taxi fares. The proposed board membership appears likely to be dominated by industry interests, thus posing a substantial risk of 'regulatory capture'. The discussion paper also proposes increases in competency requirements for drivers, which significantly exceed requirements in other jurisdictions.

Given these proposals have the potential to restrict competition, and the Territory's decision to extend the cap on taxi, hire car and minibus licences to December 2002, the Council will continue to monitor outcomes from the Territory's current review process. If the Northern Territory were to introduce new restrictions, particularly in relation to taxi and hire car licence numbers, it would need to provide a substantive justification to show that the new restrictions are in the interests of the overall community. The Council will consider review and reform activity by the Territory in relation to the regulation of the taxi and hire car sector in the 2003 NCP assessment.

Table 5.1 summarises legislative review and reform activity by jurisdiction in the taxi industry, focusing on supply restrictions.

Table 5.1: Review and reform of legislation regulating the taxi industry

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Passenger Transport Act 1990*	Limitation on numbers of taxis and hire car licences.	Review was completed in November 1999. It recommended: • annual increase (5 per cent) in licences (limited term, non-transferable) during 2000–05; • deregulation of hire cars to increase competition; • further review in 2003; and • continuing fare regulation.	The Government supports 'transitional' recommendation for 5 per cent annual increase in licences but has not fully implemented it. The Government released 180 new licences (limited term, nontransferable). Partial deregulation of hire cars via a substantial reduction in annual hire car licence fee and relaxation of vehicle standards.	Council to finalise assessment in 2003.
Victoria	*Transport Act 1983*	Limitation on numbers of taxis and hire car licences.	Review was released in October 2000. It recommended: • removal of entry restrictions for taxis and hire cars; • buy-back of existing licences, to be funded by annual fees on operators; • continuing fare regulation pending development of a competitive market; and • improvement in the quality of fare regulation via transfer of responsibility to an independent economic regulator.	The Government announced reforms in May 2002, including annual issue of 100 new 'peak period' licences for 12 years, additional licences in years 7–12 via conversion of peak licences to full licences, and limited reforms of hire car regulation.	Council to finalise assessment in 2003.

(*continued*)

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Transport Operations (Passenger Transport) Act 1994*	Limitation on numbers of taxis and hire car licences.	Report was publicly released in September 2000. It recommended: • revamping of regulatory structure around performance agreements with booking companies; and • allowing booking companies a measure of control over licence numbers.	The Government has asked the Department of Transport to develop policy measures. Indications are that Queensland's approach will reflect review recommendations.	Council to finalise assessment in 2003.
Western Australia	*Taxi Act 1994*	Limitation on numbers of taxi licences.	Review was completed in August 1999. It recommended: • removal of licence supply restrictions; • use of substantial training requirements to regulate entry; • similar requirements for hire car industry; • full compensation to existing plate owners; and • issue of new licences at a maximum rate of 20 per cent per year on a 'first come, first served' basis.	The Government does not support 'wholesale deregulation', but recognises there is a public interest case for a buy-back'. The Government has released 60 new licences, some with restrictive conditions	Council to finalise assessment in 2003.

(*continued*)

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Passenger Transport Act 1994*	Limitation on numbers of taxi licences (free entry to hire car market).	Report completed in November 1999. It recommended: • retention of existing restrictions (the Act limits the number of new general taxi licences that the Passenger Transport Board can issue in a particular year to 50, although none has been issued); and • reliance on competition from hire cars, with removal of some restrictions.	The Government is yet to announce its response to the review.	Council to finalise assessment in 2003.
Tasmania	*Taxi and Luxury Hire Car Industries Act 1995*	Limitation on numbers of taxis and hire car licences.	Report was completed in April 2000. It recommended: • annual issue of new licences up to 5 per cent by tender, subject to reserve price, or 10 per cent if tender price exceeds valuations by ten per cent; • retention of maximum fare for rank/hail market only; and • free entry to hire car industry subject to $5000 licence fee.	The Government is yet to announce its response to the review.	Council to finalise assessment in 2003.

(*continued*)

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Motor Traffic Act 1936*	Limitation on numbers of taxis and hire car licences	NCP review was completed in March 2000. On licence quotas, it recommended: • immediate removal of restrictions on supply of taxi and hire car licences; • full compensation to licence holders via a licence buy-back, with compensation to be funded via consolidated revenue or a long term licence fee regime. The ICRC released its report in June 2002. It endorses removal of supply restrictions and proposes three options for compensation (it does not recommend any particular option).	In December 2000, the Government announced it would be releasing 10 new Wheelchair Accessible Taxi licences. The Government has agreed with New South Wales to allow 16 New South Wales taxis in the ACT. The Government is expected to announce its decisions in response to the ICRC report by the end of 2002.	Council to finalise assessment in 2003.
Northern Territory	*Commercial Passenger (Road) Transport Act*	Limitation on numbers of taxis and hire car licences	Review was completed in 1998. It recommended: • elimination of restrictions on licence numbers; • compensation for the full market value of licences via a licence buy-back; and • substantial licence fees to recoup compensation costs.	The Government removed supply restrictions in January 1999, and implemented a buy-back. It imposed a six-month moratorium on the issue of new licences in November 2001 (this moratorium was later extended to December 2002). The Government issued a discussion paper containing new regulatory proposals in May 2002.	Council to finalise assessment in 2003.

Road transport related legislation

Tow truck legislation

Legislative restrictions on competition

Most jurisdictions have legislation governing the operations of tow truck owners.[25] Competition restrictions in tow truck legislation mostly cover safe and proper towing activities, procedures for towing and licensing. Some legislation provides for the central allocation of towing jobs and price-setting for some towing activities. Governments vary in the degree to which they regulate conduct.

Some jurisdictions use the licensing system to ration the number of operators to match the 'perceived need'. Restrictions based on perceived need for services give incumbent providers a competitive advantage over potential new entrants. This situation raises costs by concentrating market power, reducing the need for efficient delivery of services, placing artificially high values on licences and by contributing to regulatory risk if the regulator does not accurately predict need. Its main benefit is greater certainty.

Regulatory arrangements in some jurisdictions affect operators differently, depending on the location of the operator. Operators towing between jurisdictions may face different legislative effects, depending on where their business is located. These effects arise from prohibitions in the legislation (including the failure to recognise licences from another jurisdiction) or are the unintended effects of other registration or licensing provisions.

Regulating in the public interest

Many restrictions on tow truck operators have arisen in response to concerns about probity, consumer protection and safety. While the community benefits from assurance of probity and consumer protection, licensing and enforcement impose costs. Tight regulation of the number of licences and the structure of the industry can reduce competition by significantly raising costs for users of towing services where entry requirements are too onerous or the conduct rules are too restrictive. There are also compliance and enforcement costs for operators and governments respectively.

25 The national road transport reforms affect tow truck operators, but do not specifically cover the tow truck industry.

Consistency is another important issue, particularly for tow truck operators whose businesses are located close to State borders. Lack of a consistent legislative framework, or the failure of one jurisdiction to recognise licences issued by another, inhibits the ability of operators to work across State borders.

Review and reform activity

New South Wales reviewed and reformed its tow truck legislation in 1998. The reformed *Tow Truck Industry Act 1998* and supporting regulations provide for the establishment of a job allocation scheme. The reformed legislation also introduces a (possibly unintended) restriction on competition. Clause 69(2) of the New South Wales tow truck Regulations permits a tow truck operator licensed in another State to tow a 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. Allowing tows one way and not the other on the basis of licensing would appear to restrict competition.

The New South Wales Government has committed to review the Tow Truck Industry Act six months after the job allocation scheme begins. It has begun drafting the terms of reference for the review and is establishing a steering committee. The terms of reference will provide for further analysis of clause 69(2). Given that New South Wales is establishing the review, the Council considers that New South Wales has met its obligations for the 2002 assessment. The Council will conduct a final assessment of compliance with CPA principles in 2003.

Victoria has reviewed its tow truck legislation. The legislation restricts market entry and conduct by limiting the number of licences available, and defining particular licence categories and the licence conditions. In particular, new accident towing licences (including heavy vehicle accident towing licences) can only be issued with Ministerial approval and then only after the licensing authority has assessed the need for the new licence (the need criterion). The legislation also manages charges, implements a central job allocation system within the Melbourne metropolitan area and places obligations on repairers. The review recommended that the Government:

- clarify the objectives of the legislation;
- replace the job allocation scheme with a mechanism to allow for bidding for franchised towing areas, or alternatively, modify the job allocation scheme;
- remove the need criterion from the accident towing licence approval process;

- clarify the zone boundaries and review the Melbourne metropolitan boundaries;

- continue the regulation of accident towing fees (this would not be necessary if the franchise bidding scheme is adopted), but allow greater transparency and independence in their establishment; and

- extend the cooling-off period for repairs.

The Victorian Government has announced that it supports many of the recommended reforms and has established a working party to facilitate implementation. Victoria has not announced its intentions concerning the recommendations for the franchise bidding scheme and the abolition of the needs criterion for new accident towing licences. The recommended changes would encourage greater competition and efficiency by lowering the barriers to entry, reducing licence values and other costs and eliminating the need for the Government to regulate tow fees.

Victoria's approach to tow truck licences has meant that licences have acquired a value because of their scarcity. In this regard tow truck licensing has some similarities to taxi licensing, although the licence values are somewhat lower for tow trucks. The review report noted that in 1999 there were 378 metropolitan accident towing licences which it estimated were worth around $22.7 million (approximately $60 000 per licence). In terms of the cost to consumers, the review report estimated that about half the accident towing fee could be attributed to servicing the capital cost of the licence.

Victoria has indicated that it is examining the effects on existing licence holders of different ways licences are used to define property rights, including the regulatory changes recommended in the review report. This will inform the Government's approach to further tow truck legislation reform. The Council acknowledges that potential changes in outcomes for existing licence holders may raise structural adjustment issues that warrant consideration by Victoria. Victoria will need to ensure, however, that the transitional issue of a reduction in the value of licences is not used to defer implementation of reforms that its NCP review has shown to be in the public interest. The Council will finalise its assessment in 2003.

Queensland's regulation of tow truck operations only applies to towage of vehicles damaged in an accident. The restrictions in the legislation aim to provide consumer protection where a consumer may be at a disadvantage because they have no prior knowledge of the service, are not in a position to shop around and/or are unable to make a clear decision because they are suffering an injury or trauma.

Queensland's review of its *Tow Truck Act 1973* and related regulations found a public benefit justification for the restrictions in the Act. It found that regulation is the only way in which to achieve the Government's consumer protection objectives and proposed amendments to strengthen the Act's

consumer protection provisions. The Council considers that Queensland has fulfilled its CPA clause 5 obligations.

South Australia has reviewed its tow truck legislation, but has not yet announced its response to the review. The Council will finalise its assessment of South Australia's compliance with CPA clause 5 in 2003.

The Northern Territory tow truck industry legislation contains few restrictions on competition. It contains no discriminatory elements and gives consumers the freedom to choose their supplier of towing services. The Territory's NCP review recommended only minor changes to the legislation, which the Government has implemented. The Council considers that the Northern Territory has met its CPA clause 5 obligations.

The ACT has no legislation governing tow truck operators. Neither Western Australia nor Tasmania have listed any legislation restricting tow truck operations for NCP review. The Council considers that these governments have met their CPA clause 5 obligations.

Table 5.2 summarises the progress of governments' review and reform activity relating to the tow truck industry.

Table 5.2: Review and reform of legislation regulating tow trucks

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Tow Truck Industry Act 1998*	Licensing, job allocation scheme, pricing controls	New legislation. Review is to begin six months after the job allocation scheme is established.		Council to finalise assessment in 2003.
Victoria	*Transport Act (Tow Truck) 1983* and Transport (Tow Truck) Regulations 1994	Market conduct, licensing, fee setting	Review was completed in 1999. It recommended: the removal of entry restrictions for the heavy vehicle towing market; the development of an industry code of practice; a more proactive role for insurers in educating their customers; the retention of the allocation scheme; and the introduction of a franchise scheme for the Melbourne metropolitan area.	The Government's response is yet to be legislated.	Council to finalise assessment in 2003.
Queensland	*Tow Truck Act 1973* and Tow Truck Regulation 1988		Review completed in 1999, finding a public benefit justification for the consumer protection and industry regulation provisions in the Act.	Act was amended in 1999.	Meets CPA obligations (June 2002).
South Australia	*Motor Vehicles Act 1959*	Market conduct	Review completed.	Review report is with the Government, awaiting response.	Council to finalise assessment in 2003.
Northern Territory	*Consumer Affairs and Fair Trading Act* (part 13)	Code of practice	Review was completed in October 2000. It recommended retaining the code of practice and formalising the right for all consumers to be offered a tow of their choice.	The Government approved the review recommendations in November 2000.	Meets CPA obligations (June 2001) for tow trucks.

Dangerous goods legislation

Dangerous goods legislation covers a wide range of activities and goods. The laws usually relate to the manufacture, transport, storage and use of explosives, fireworks, chemicals and other high-risk substances, including flammable, carcinogenic and radioactive materials. The principal objectives of legislation are to maintain health and safety, and to protect the environment.

Regulation of the transport of dangerous goods by road

Regulation of the transport of dangerous goods by road was reformed as part of the national road transport reform program that CoAG endorsed for the 1999 NCP assessment (NCC 1999b). All governments now have legislation, regulations and a code of conduct that are consistent with the national provision for the carriage of dangerous goods by road, so all comply with the national road transport reforms and CPA clause 5.

Other regulation of dangerous goods

In addition to regulations governing the road transport of dangerous goods, several other provisions governing dangerous goods restrict competition. These cover primarily the licensing of businesses and equipment operators such as shotfirers and gasfitters. The licences can be prescriptive, stipulating requirements for the manufacture, transport and handling of the goods. Some legislation stipulates conditions for displaying items such as fireworks.

More than 10 years ago, CoAG initiated moves to harmonise the regulation of safe handling of dangerous goods. As part of this process, the National Occupational Health and Safety Commission formally declared the National Standard for the Storage and Handling of Workplace Dangerous Goods and an accompanying national code of practice in 2000. The Commonwealth Government's economic impact assessment of the national standard found, in net present value terms, that the benefits may marginally outweigh the costs over 10 years. The assessment also identified qualitative benefits, including:

- *nationally consistent approach to the management of hazards arising from the storage and handling of dangerous goods;*
- *improved awareness and safety levels in workplaces and in the community generally;*
- *better protection of the environment;*

- *flexibility for industry in dealing with changes arising from the introduction of new technology, products and processes;*
- *consistency with other relevant legislative and regulatory frameworks; and*
- *reductions in impediments to trade.* (NOHSC 2001, p. 55)

Following the release of the national standard and the national code of practice, all States and Territories are now in a position to replace existing dangerous goods legislation (which mandates inflexible technical requirements and is inconsistent across jurisdictions) with the new standard and code of practice. Some jurisdictions have enacted harmonised legislation based on the code of practice. Codes of conduct are generally less restrictive than prescribed conditions because they allow flexibility in achieving outcomes. Inconsistencies among jurisdictions also hamper competition because more than one standard applies if an activity crosses State boundaries.

Review and reform activity

New South Wales has reviewed the *Dangerous Goods Act 1975* and regulations, but it is yet to implement the national standard. While New South Wales has not completed its review and reform activity by the CoAG deadline of 30 June 2002, the Council considers that the State's progress is sufficient to suggest that it will soon comply with its CPA obligations. The Council will finalise its assessment in 2003.

Victoria completed its review of dangerous goods legislation and enacted new regulations relating to explosives, storage and handling and occupational health and safety at major hazard facilities. These regulations do not substantially change previous arrangements, and retain licences and permits as the primary management tool. The national standard was proclaimed after Victoria finalised its review and reform activity. It is not clear whether the measures in the current legislation and regulations reflect the national standard. The Council needs confirmation of this so it can finalise its assessment of Victoria's compliance with its CPA obligations in 2003.

Queensland repealed its *State Transport Act 1960*, which covered the transport of dangerous goods. Queensland stated that any future legislative control of restricted goods will occur by regulation and will be subject to public benefit requirements. Queensland has enacted the *Dangerous Goods Safety Management Act 2001* and associated regulations, which are consistent with the national standard. The Council considers that Queensland has satisfied its CPA clause 5 obligations.

Western Australia's *Explosives and Dangerous Goods Act 1961* imposes requirements for licences, authorisations, permits and approvals to achieve safe handling. The State's review found that there are better ways in which to

achieve this objective. It recommended less onerous restrictions, an alignment of licensing requirements for dangerous goods with those for other chemicals, and industry responsibility for health and safety matters. A Bill to amend the Act is to be introduced in the autumn 2002 session of Parliament. While Western Australia has not completed its review and reform activity by 30 June 2002, it has made substantial progress. The Council will finalise its assessment of Western Australia's compliance in 2003.

The South Australian *Dangerous Substances Act 1979* imposes a general duty of care in keeping, handling, conveying, using and disposing of dangerous substances. Licences are required to keep and convey these substances. The State's review of this legislation recommended no changes to the legislation. South Australia has not yet provided the public benefit arguments supporting this review recommendation or explained how it proposes to introduce the national standard. The Council will finalise its assessment of South Australia's compliance in 2003.

Tasmania repealed its *Dangerous Goods Act 1976* and replaced it with the *Dangerous Goods Act 1998*. The new Act is based on the National Road Transport Council's legislative model for road transport of dangerous goods, which Tasmania has adapted and expanded to cover the use, storage and handling of dangerous goods. The new Act uses codes of conduct rather than licences and permits to achieve its objective. The Council considers that Tasmania has met its CPA clause 5 obligations.

The ACT reviewed its *Dangerous Goods Act 1984* as part of an overall review of occupational health and safety legislation. A new legislative framework will incorporate the national standard. While the ACT did not complete its legislative changes by 30 June 2002, it has made substantial progress. The Council will finalise its assessment of the ACT's compliance in 2003.

The Northern Territory reviewed its *Dangerous Goods Act* and replaced it with a new Act. The Northern Territory advised the Council that the regulations under the new Act are not finalised and that any licensing requirements in the new regulations will be subject to NCP review and analysis. While the Northern Territory did not complete all regulatory changes by 30 June 2002, it has made substantial progress. The Council will finalise its assessment of the Northern Territory's compliance in 2003.

Table 5.3 summarises the progress of governments' review and reform activity relating to the regulation of dangerous goods.

Table 5.3: Review and reform of legislation regulating dangerous goods

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Dangerous Goods Act 1975*	Licensing of premises, vehicles and vessels, and the sale of dangerous goods; special licences required for the import, manufacture, sale, supply and receipt of explosives. Does not apply to the transport of dangerous goods by road or rail.	Review of the Act and associated regulations (as part of the implementation of the national standard) completed.	The Government finalised the implementation of the *Occupational Health and Safety Act 2000* and the Occupational Health and Safety Regulation 2001. It will now prepare a detailed proposal for implementing the national standard in New South Wales.	Council to finalise assessment in 2003.
Victoria	*Dangerous Goods Act 1985* (s. 15)	Licensing, register of facilities, prior approval of facilities	Review was completed in 1999.	The Government established new regulations relating to explosives, storage and handling, and occupational health and safety measures at major hazard facilities.	Council to finalise assessment in 2003.
Queensland	*State Transport Act 1960*	Regulation of the transport of dangerous goods	Legislation was repealed		Meets CPA obligations (June 2002).
	Dangerous Goods Safety Management Act 2001 *Dangerous Goods Safety Management Regulation 2001*	Safety obligations		The Government enacted legislation consistent with the national standard for the handling and storage of dangerous goods.	Meets CPA obligations (June 2002).

(continued)

Table 5.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Explosives and Dangerous Goods Act 1961*	Licensing, permits, authorisations and approvals	Review was completed in 1998. It found that there are frequently more efficient and effective ways of achieving the objectives of the legislation. It recommended: aligning licensing requirements for manufacture, transportation and use with existing controls for other chemicals; shifting responsibility for safety and accreditation to industry; and having less onerous restrictions on sale, display and use of fireworks.	*Dangerous Goods (Transport) Act 1998* revised the classification of such goods and accounted for transport-related matters. A Bill to enact the remaining recommendations will be introduced into the autumn 2002 session of Parliament.	Council to finalise assessment in 2003.
South Australia	*Dangerous Substances Act 1979*	General duty of care in keeping, handling, conveying, using or disposing of dangerous substances; licences to keep and convey dangerous substances	Review was completed in 1999. It found that the benefits of restrictions outweigh the costs.	The review recommended no reform.	Council to finalise assessment in 2003.
Tasmania	*Dangerous Goods Act 1976*		Act was repealed and replaced by new dangerous goods legislation.	New legislation is based on the National Road Transport Commission's legislative model for transport of dangerous goods by road, which has been expanded to include the use, storage and handling of dangerous goods.	Meets CPA obligations (June 2001).

(continued)

Table 5.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Dangerous Goods Act 1998*	Code of conduct	Replacement legislation was assessed under the gatekeeper requirements.	Restrictions such as licences have been replaced with a code of conduct based on national road transport reforms.	Meets CPA obligations (June 2001).
ACT	*Dangerous Goods Act 1984* (applies the New South Wales legislation to the ACT)	Licensing of premises, vehicles and vessels, and the sale of dangerous goods; special licences for the import, manufacture, sale, supply and receipt of explosives. Does not apply to the transport of dangerous goods by road or rail.	Review was completed as part of overall review of the ACT's occupational health and safety legislation. A regulatory impact statement was prepared and released for public comment. A new national standard was released. The ACT is considering how this can be incorporated into a new legislative framework, taking into account the regulatory impact statement and public consultation.		Council to finalise assessment in 2003.
Northern Territory	*Dangerous Goods Act* and Regulations	Requirements for the transport, storage and handling of dangerous goods; business licences to manufacture, store, convey, sell, import or possess prescribed dangerous goods (ss 15–21); operators' licences for drivers of dangerous goods vehicles (Regulation 56), shotfirers (Regulation 132), gasfitters (Regulation 172) and autogasfitters (Regulation 202)	Review completed.	Act was repealed and the new *Dangerous Goods Act* was assented to on 30 March 1998. Draft regulations are being prepared. Restrictions in regulations will be subject to NCP review and analysis.	Council to finalise assessment in 2003.

Specialist and enthusiast vehicle scheme

The Commonwealth has responsibility for legislation relating to uniform vehicle standards. The objective of the *Motor Vehicle Standards Act 1989* is to set uniform standards to apply to road vehicles when they begin to be used in Australia, with particular emphasis on vehicle safety, emissions, anti-theft and energy savings. The benefits of requiring vehicles to meet safety, emission and anti-theft standards extend beyond the owner of the vehicle to the wider community. The standards assist, for example, in improving the safety of other road users, protecting the environment and deterring crime.

Legislative restrictions on competition

The Motor Vehicle Standards Act required all vehicles entering the Australian market to meet certain safety, emission control and anti-theft standards. The Act allowed for vehicles to be imported under one of two regimes: the full volume scheme, under which most vehicles were imported, and the low volume scheme. While the total cost of full volume certification was substantial, it was spread over a large number of vehicles and thus the cost per vehicle was low. The low volume scheme established concessional arrangements to reduce the unit cost for importers of small numbers of vehicles. Differences in the way in which suppliers were treated under these two schemes could have restricted competition.

Following a review of the Act, the Commonwealth introduced the specialist and enthusiast vehicle scheme to administer the importation arrangements for used vehicles. The scheme restricts imports of used vehicles to those satisfying certain criteria. It is available to both full volume and low volume importers, and removes the concessional arrangements for low volume imports. The Commonwealth's changes to the Motor Vehicle Standards Act introduced several new restrictions, however, including:

- the limit on imports of used vehicles (under the low volume scheme) to 'specialist' and 'enthusiast' vehicles, and the prevention, under this scheme, of the importation of what are effectively standard vehicles, for example, vehicles with diesel instead of petrol engines;
- a scheme to regulate registered automotive workshops; and
- a requirement that all imported used vehicles be inspected and approved by registered automotive workshops to ensure each vehicle's compliance with the appropriate national standards.

Assessment

For compliance with CPA clause 5, the Commonwealth needs to have demonstrated that the restrictions introduced by the changes to the Motor Vehicle Standards Act provide a net community benefit and are necessary to achieving the Commonwealth's safety, environmental and vehicle security objectives. The review report provides a public benefit argument for requiring vehicles to be inspected by registered automotive workshops, noting:

> *There are a number of advantages with the registered workshop concept which include:*
>
> - *the potential for development of co-regulation with industry;*
> - *the workshop will provide a higher level of assurance that the vehicles comply with the ADRs [Australian Design Rules];*
> - *the workshops can provide a network of service and spare parts;*
> - *the workshops may be held responsible to conduct safety recalls;*
> - *it would restrict the Scheme to legitimate vehicle converters;*
> - *the costs would be borne directly by the workshops;*
> - *the scope of the workshops could be extended to include after-market modifications (fitting additional seats and additional axles fitted to trucks) and modifying vehicles 15 years or more [old] and personally imported vehicles to meet State and Territory registration requirements; and*
> - *FORS [Federal Office of Road Safety] resources could be better aligned to core functions and towards its audit function to maintain industry standards.* (Review Task Force 1999, p. 93)

The review task force considered that the cost of some imported vehicles may rise as a result of the workshop scheme, but judged that the higher level of compliance and the consumer benefits would outweigh this cost. The Council considers that the Commonwealth's decision to implement the registered workshop scheme and the requirement for vehicle inspection is consistent with CPA clause 5.

The introduction of the specialist and enthusiast vehicle scheme is not consistent with the recommendations of the review of the Motor Vehicle Standards Act, so the review report does not provide a public interest justification for the scheme. The review task force recommended retaining the low volume scheme. It specifically rejected the option of limiting 'the number of models by tightening up current eligibility criteria to ensure only "specialist and enthusiast" vehicles are eligible' (Review Task Force 1999, p. 89). The task force stated that this option 'would have an adverse impact on the viability of small business and would reduce consumer choice. It did

not see any positive benefits from restricting imports to enthusiast vehicles and did not consider this to be an appropriate course of action' (Review Task Force 1999, p. 89). Further, the task force commented that:

> *It is clear to the Task Force that industry policy is more sensitive to increasing numbers of used vehicles rather than to the safety and emissions aims of the MVSA [Motor Vehicle Standards Act]. Early in the review the Task Force formed the view that the intertwining of industry policy and uniform vehicle standards in the operation of the Low Volume Scheme under the MVSA was the major cause for the administrative problems engendered by the Scheme. The Task Force would like to see industry policy addressed elsewhere and the legislation return to its safety, emissions and anti-theft objectives.* (Review Task Force 1999, p. 94)

To understand the Commonwealth's public interest reasoning, the Council examined the regulatory impact statement (RIS) prepared by the Department of Industry, Science and Resources in conjunction with the Department of Transport and Regional Services for the amendments to the Motor Vehicle Standards Act. The RIS sought to make a case that the number of used vehicles being imported far exceeded what had been originally intended and had the capacity to threaten Australia's motor vehicle industry, thus warranting the controls introduced by the specialist and enthusiast vehicles scheme.

The RIS argued that imports of used vehicles under the low volume scheme allowed for a broader range of vehicles to be imported than had been the intent of the legislation in 1971, and that the growth in used vehicle imports under the low volume scheme could undermine the passenger motor vehicle plan. It was unable, however, to provide solid evidence for the case that the cost to the new vehicle industry would be more than the benefits (to industry and consumers) of the existing criteria. It noted that imports of *used* vehicles under the low volume scheme in 2000 was 2 per cent of *new* vehicle sales in that year. It argued that the higher specifications of these vehicles meant that they could compete with some new cars despite their average age of between seven and nine years. In addition, one third of the used vehicles imported were four wheel drive vehicles (which are not manufactured in Australia). Many of the four wheel drive vehicles were imported under the low volume scheme because they were diesel (not petrol) powered. The task force recommended that a vehicle that is the same type as a full volume model except for the engine (such as diesel or high powered) could not reasonably be considered to be a specialist or enthusiast vehicle, so should be excluded from the scheme. The RIS did not specify the impact of the specialist and enthusiast vehicle scheme eligibility criteria on business and consumers.

The Commonwealth Office of Regulation Review, which provides the gatekeeper process for legislative amendments by the Commonwealth, considered that the RIS did not satisfy the Government's requirements. It raised concerns about the specification of the problem, the statement of the

Government's objectives and the analysis of the impact of the changes. In particular, it raised the issue of the Government using legislation aimed at safety and standards setting to implement industry policy where there was no quantification of the costs and benefits. The Council considers that the Commonwealth has not demonstrated compliance with CPA clause 5 in relation to the changes to the Motor Vehicle Standards Act.

Rail

While the NCP agreements do not specifically cover the rail sector, rail is subject to CPA's general provisions relating to competitive neutrality, structural reform of public monopolies and legislation review and reform.

Historically, the level of government ownership in the rail sector has been high — and still is in several States — but private sector involvement is increasing as governments move to fully or partly privatise their rail businesses. Western Australia and Victoria privatised their rail line and rail transport businesses. New South Wales maintains government ownership over its rail line infrastructure but privatised its rail freight business.

The application of competitive neutrality principles to government rail businesses is relevant, particularly where there is competition, or the potential for competition, with private sector rail businesses. Structural reform obligations arise where governments privatise rail monopolies and/or introduce competition through third party access regimes. Where separate organisations conduct the rail line and transport businesses, access regimes focus on removing the monopoly elements from access terms and conditions. Where a single organisation conducts rail line and rail transport businesses, access regimes commonly address competitive neutrality issues such as ensuring access seekers affiliated to the access provider are not advantaged over other access seekers.

Governments legislate in relation to rail services, typically to establish operating arrangements for government rail businesses (including establishing government-owned monopolies) and to impose requirements aimed at ensuring the safety of rail users. Legislation in these areas has generally restricted competition.

Competitive neutrality

The Council has considered competitive neutrality issues relating to the Commonwealth, New South Wales and Queensland in this 2002 assessment. The 2001 NCP assessment reported on complaints lodged by Capricorn Capital against the National Rail Corporation Limited, a rail freight business then owned jointly by the Commonwealth (majority owner), New South Wales and Victoria, and against FreightCorp, a bulk freight transport operator then

owned by New South Wales. Capricorn Capital alleged that neither corporation was satisfying competitive neutrality objectives because neither was earning a commercial return on assets, and that FreightCorp also had other advantages linked to its government ownership. These advantages included preferential access to strategic assets (such as port and metropolitan rail terminals), the receipt of government payments for community service obligations (CSOs) that were unconnected to costs incurred and services delivered, and the tendency for the Department of Transport to act as an agent of FreightCorp rather than as a neutral regulator. At the time of the complaints, the owner governments had announced their intention to sell both businesses.

The Commonwealth Competitive Neutrality Complaints Office investigated the complaint against the National Rail Corporation. The New South Wales Government deferred referring the FreightCorp complaint to its complaints body (the Independent Pricing and Regulatory Tribunal) because privatisation was pending, but it addressed the main focus of the Capricorn Capital complaint via a review of FreightCorp's CSOs. Arising from this review, the New South Wales Government introduced arrangements to improve the focus and transparency of the exclusive freight service contract between the Department of Transport and FreightCorp, and established a mechanism to examine third party complaints regarding CSO funding. Both rail companies were privatised in February 2002. Private companies are not subject to the CPA competitive neutrality obligations.

In 2001 the Queensland Competition Authority reported on a competitive neutrality complaint against Queensland Rail's livestock transportation service, Cattletrain. The complainant[26] alleged that Queensland Rail had breached the principle of competitive neutrality in central Queensland because it:

- offered more favourable prices to selected customers to attract them to Cattletrain;
- discounted livestock freight rates to particular businesses; and
- enjoyed a procedural and operational advantage as a result of animal welfare transport standards.[27]

The Queensland Competition Authority found the complaint relating to volume discount pricing on rail services between Richmond Shire (via Winton) and Rockhampton to be substantiated. It also found, however, that the open-ended financial arrangements between Queensland Rail and the

26 The complainant requested that its identity be kept confidential and that the Australian Livestock Transporters Association act as its agent.

27 Queensland rail was alleged to have influenced the development of the animal welfare standards for livestock transport, thus giving Cattletrain an advantage over its private sector competitors.

Queensland Government that supported the volume discount were no longer in place. It concluded that no further action was necessary on this matter. The authority found that other aspects of the complaint were not substantiated because:

- discounting to encourage improved operational efficiency is a common commercial practice and not necessarily due to Queensland Rail's Government ownership;
- the substitution of larger wagons for smaller wagons at the same price was due to operational requirements; and
- the Australian Model Code of Practice for the Welfare of Animals – Land Transport of Cattle is a voluntary code and can not be considered to be a regulatory requirement.

The Council considers that there are no outstanding issues with Queensland Rail's application of competitive neutrality principles.

Structural reform

New South Wales and Western Australia had structural reform obligations for this assessment. The Council concluded in the 2001 NCP assessment that Victoria had met CPA obligations in relation to the privatisation of V/Line Freight.

New South Wales

In 1996 New South Wales restructured the vertically integrated State Rail Authority to create four separate transport entities: the State Rail Authority, to provide passenger services; the Rail Services Authority, to maintain the track; the Rail Access Corporation, to manage the rail network and administer access by public and private operators; and FreightCorp (privatised in February 2002), to provide nonpassenger freight services.

The New South Wales Government further reviewed the structure of its rail businesses following the 2000 Glenbrook accident, given that the inquiry into the accident found that rail safety was not given sufficient weight following the 1996 changes. The Government legislated in late 2000 to accommodate the inquiry's findings, which involved creating the Rail Infrastructure Corporation with responsibility for owning and operating track infrastructure. In the 2001 NCP assessment, the Council noted that New South Wales needed to ensure that responsibility for safety regulation was vested outside the Rail Infrastructure Corporation to meet its clause 4 obligations, because the corporation is an entity with commercial operating responsibilities.

The New South Wales Government advised that it has now established the Rail Safety Regulator within the Department of Transport to manage rail safety and introduced other measures to enhance rail safety (New South Wales Government 2002). These actions satisfactorily address the concern raised by the Council in the 2001 NCP assessment.

Western Australia

In December 2000 Western Australia sold the freight business of Westrail (consisting of rolling stock and freight contracts) to a private consortium, the Australian Railroad Group. Western Australia retained ownership of the rail track but leased it to the consortium to manage track access for a 49-year term. A third party access regime, covering both interstate and intrastate rail services, became fully operative with the proclamation of the *Railways (Access) Act 1998* on 1 September 2001 and the subsequent appointment of an acting rail access regulator.

The decision to sell Westrail's freight business triggered a CPA clause 4 obligation on Western Australia to review the structure of Westrail. Western Australia's Rail Freight Sale Task Force completed this review in September 1999. The review found that the rail track, the rolling stock and the freight contracts should be sold as an integrated business. Further, the review concluded that privatisation would limit the need for competitive neutrality measures and that Western Australia had satisfied regulatory separation obligations by transferring responsibility for safety regulation to the Department of Transport under the *Rail Safety Act 1998*. The third party access regime contains ringfencing arrangements to ensure Westrail's operation of integrated businesses does not disadvantage access seekers.

Legislation review and reform

Several pieces of legislation that regulate the operation of rail businesses and impose requirements for rail safety are relevant to the assessment of governments' compliance with CPA clause 5. Table 5.4 notes the progress of governments' review and reform of rail sector legislation.

New South Wales has removed the restriction on the carriage of intrastate freight from the *National Rail Corporation (Agreement) Act 1991*. As discussed in the above section on structural reform obligations, New South Wales established the Rail Safety Regulator under the *Rail Safety Act 1993*, satisfying its obligation under CPA clause 4 to separate safety regulation from service provision.

Queensland initially had not scheduled the Transport Infrastructure (Rail) Regulation 1996 for review. It now has conducted a departmental review, however, which has proposed several changes to the regulation of rail safety.

While Queensland will not have implemented these changes by 30 June 2002, the Council accepts that additional time to complete review and reform activity is warranted where legislation is a later addition to a government's review and reform program. The Council will finalise its assessment of Queensland's compliance in this area in 2003.

Tasmania has repealed a number of Acts that restricted competition in the rail sector. The Council considers that Tasmania has met its CPA clause 5 obligations for these matters. Tasmania is yet to decide on the repeal of other Acts, however, the Council will consider these matters in 2003.

Table 5.4: Review and reform of legislation regulating rail services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*National Rail Corporation (Agreement) Act 1991*	Approves and gives effect to an agreement between the Commonwealth, New South Wales and other States relating to the National Rail Corporation Limited.	During the pre-sale process, shareholders agreed to remove the restriction in S. 7 that prevented the corporation from carrying intrastate freight.	Section 7 was repealed through the *Statute Law (Miscellaneous Provisions) Act 2000* in August 2000. National Rail was privatised in February 2002	Meets CPA obligations (June 2002).
	Rail Safety Act 1993	Allows potential for restraint on competition in pursuit of the safe construction, operation and maintenance of railways.	Glenbrook Inquiry was completed in April 2001.	In response to the Glenbrook Inquiry's recommendations, rail safety regulation arrangements were established separately from the provider of rail network services.	Meets CPA obligations (June 2002).
Victoria	*Border Railways Act 1922*		Review concluded that legislation does not restrict competition.		Meets CPA obligations (June 2001).
	National Rail Corporation (Victoria) Act 1991		Review concluded that legislation does not restrict competition.	National Rail was privatised in February 2002.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	Transport Infrastructure (Rail) Regulation 1996 under the *Transport Infrastructure Act 1994* Legislation was not initially scheduled for review.	Includes rails safety regulations that could restrict competition.	Departmental review proposed amendments, prepared a draft public benefit test and consulted with relevant agencies.	Timing for implementation is to be advised.	Council to finalise assessment in 2003.
Western Australia	*Government Railways Act 1904* and By-laws 1–53, 55, 59, 60, 62, 63, 64, 68, 74, 75 and 76.	Raises market power and competitive neutrality issues.		*Government Railways (Access) Act 1998* and the *Rail Safety Act 1998* have removed various advantages and disadvantages conferred on the Government business.	Meets CPA obligations (June 2001).
Tasmania	*Burnie to Waratah Railway Act 1939*	Provides a particular company with a competitive advantage by conferring the authority to operate and maintain a railway.	Review was deferred pending proclamation of the *Rail Safety Act 1997,* because the safety and access provisions will negate the need for this Act.	Tasmania is considering whether repeal is necessary to guarantee third party access.	Council to finalise assessment in 2003.
	Don River Tramway Act 1974	Provides a particular company with a competitive advantage by conferring authority to construct and operate a railway.	Review was deferred pending proclamation of the *Rail Safety Act 1997,* because the safety and access provisions will negate the need for this Act.	Act was repealed by the *Legislation Repeal Act 2000.*	Meets CPA obligations (June 2002).

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Ida Bay Railway Act 1977*	Excepts Ida Bay Railway from the provisions of the *National Parks and Wildlife Act 1950* and the *Railway Management Act 1935.*		Act was repealed in April 2001.	Meets CPA obligations (June 2002).
	Railway Management Act 1935	Gives the Transport Commission the power to issue licences to re-open abandoned railways. Exempts railway buildings from planning laws.	The Government no longer owns railways.	Legislation to repeal this Act has been passed and is scheduled for proclamation before the end of 2002.	Meets CPA obligations (June 2002).
	Railways Clauses Consolidation Act 1901	Authorises the construction of railways or tramways and sets fares, construction standards, rates and charges.		Act was repealed by the *Legislation Repeal Act 2000*.	Meets CPA obligations (June 2001).
	Van Dieman's Land Company's Waratah and Zeehan Railway Act 1895 *Van Dieman's Land Company's Waratah and Zeehan Railway Act 1896* *Van Dieman's Land Company's Waratah and Zeehan Railway Act 1948*	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway, and prescribes the construction standards that must be met.	Review was deferred pending proclamation of the *Rail Safety Act 1997,* because the safety and access provisions will negate the need for these Acts.	Tasmania is considering whether repeal is necessary to guarantee third party access.	Council to finalise assessment in 2003.

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Wee Georgie Wood Steam Railway Act 1977*	Provides a particular company with a competitive advantage by conferring the authority to construct and operate a railway and prescribes the construction standards that must be met.	Review was deferred pending proclamation of the *Rail Safety Act 1997*, because the safety and access provisions will negate the need for this Act.	Act was repealed by the *Legislation Repeal Act 2000.*	Meets CPA obligations (June 2002).

Ports and sea freight

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

Legislative restrictions on competition

Ports, marine and shipping activity has been subject to government regulation for many years. Many of the statutes date from the early 1900s and were enacted to regulate, manage and set prices and safety standards for the use of shipping channels and port infrastructure. Regulations that restrict competition include:

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

Review and reform activity

All governments except the ACT listed legislation regulating ports, shipping and marine activity for review under the NCP. Table 5.5 summarises the progress of governments' review and reform activity in this area.

Commonwealth

The Commonwealth has reviewed several laws relating to ports and shipping, and has taken or is undertaking the following reforms.

- The Commonwealth completed reviews of the *Australian Maritime Safety Authority Act 1990* and part X of the *Trade Practices Act 1974* (TPA), and has implemented reforms. The Council concluded in the 2001 NCP assessment that the Commonwealth had met its CPA obligations in relation to this legislation.

- The Commonwealth's review of the *Shipping Registration Act 1981*, which provides for the registration of ships in Australia, recommended that Australia continue to legislate to fix conditions for the grant of nationality to its ships in accordance with international conventions. The review made recommendations to facilitate this outcome. The Government approved Act amendments to implement the review recommendations in 1998. The shipping industry has since raised concerns that proposed legislative amendments could have an impact on finance for shipping, particularly mortgage arrangements. The amendments have not proceeded. The Council will finalise its assessment of the Commonwealth's compliance in this area in 2003.

- The Commonwealth's Shipping Reform Group reviewed the coastal trade provisions of part VI of the *Navigation Act 1912*. In response to the Shipping Reform Group's report, the Commonwealth has streamlined the processes for engaging in coastal trade that are specified in part VI. The Commonwealth has also significantly reduced the charge for a permit to engage in coastal trade and broadened the criteria for issuing these permits. Other elements of part VI — which with other legislation (particularly immigration legislation) allow for cabotage in coastal shipping — are to be subject to separate consideration. The Commonwealth has not expanded on this matter or clarified whether a review (if any) would consider the NCP issues associated with cabotage's inherent restrictions on competition.

- The Commonwealth reviewed the remainder of the Navigation Act via a two-stage process. The first stage resulted in the Navigation Amendment (Employment of Seafarers) Bill 1998 aimed at removing the employment-related provisions that are inconsistent with the *Workplace Relations Act 1996* and the concept of company employment. Employment conditions for seafarers are now set via enterprise agreements certified by the Australian Industrial Relations Commission. The second-stage review, completed in June 2000, covered all the maritime and safety issues in the original Act, apart from those in part VI. The review found that the benefits of regulating ship safety and environmental protection outweigh the potential costs of restricting competition. The review 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.

  The second-stage review also considered seafarers' employment arrangements that had been deferred from the first-stage process following Senate proposals to amend the Navigation Amendment

(Employment of Seafarers) Bill. The review found that some employment provisions are redundant or would be more appropriately addressed under modern company-based employment arrangements governed by modern industrial relations legislation. It recognised, however, that the legislation should continue to cover employment-related matters derived from international convention obligations that relate to safety or specific shipping operations. The review proposed a re-focus of the regulation towards the adoption of performance-based standards, but considered that this approach would need to be consistent with international regulations, much of which are prescriptive in nature.

The Commonwealth has advised that new shipping legislation, rather than amendments to the Navigation Act would be more efficient at handling changes proposed by the review. It indicated that new legislation cannot be developed, however, until several substantial matters are resolved in consultation with the industry, the States and the Northern Territory to ensure adequate regulatory coverage and workable solutions. The Council will finalise its assessment in 2003.

- The Australian Transport Safety Bureau, formed in 1999, is a multimodal investigation unit, bringing together the air and maritime investigation functions and the nonregulatory functions of the Office of Road Safety. The Commonwealth is also considering new legislation to consolidate under one Act all provisions relating to the Commonwealth's transport accident investigation functions. This legislation will replace the relevant provisions of the Navigation Act and address the concern raised in the Navigation Act review that the Commonwealth legislation overrides State and Northern Territory legislation covering investigations of marine incidents.

- The Commonwealth Department of Industry, Tourism and Resources completed its review of offshore petroleum safety and published a report in November 2001 (*Future Arrangements for the Regulation of Offshore Petroleum Safety*). The Ministerial Council for Mineral and Petroleum Resources considered the issue of offshore petroleum safety at its inaugural meeting on 4 March 2002 and Ministers agreed that the council's Standing Committee of Officials would implement a work program to examine how best to improve offshore safety outcomes primarily through a single national safety agency to be assessed against the agreed set of principles. The Standing Committee of Officials, under the chair of the Commonwealth, is to report to the Council in August 2002.

New South Wales

New South Wales repealed several pieces of shipping legislation, consolidating their provisions in the *Marine Safety Act 1998*. It removed some anticompetitive elements of the repealed legislation through its Licence Reduction Program. The Government intends to conduct an NCP review of the remaining competition restrictions in the Marine Safety Act once the Act

has been in operation for 12 months. The Council will assess the State's progress in 2003.

The *Ports Corporation and Waterways Management Act 1995* established statutory State-owned corporations to manage the State's port authorities, established the Waterways Authority, provides for pilotage and other port charges, and vests responsibility for waterways management and marine safety functions in the Minister. The legislation allows the Minister to fix port access charges, prescribes the structure of some charges and allows ports to fix pilotage charges. New South Wales completed a statutory review and an NCP review of the Act in December 2001. The Government is yet to announce its response to these reviews, so is yet to demonstrate that it has met its CPA clause 5 obligations. The Council will finalise its assessment of compliance in relation to this Act in 2003.

Victoria

Victoria completed a review of the *Marine Act 1988* to clarify the responsibilities of harbour masters. The review recommended:

- retaining the requirement for vessels to be registered, on the grounds that the benefits of registration outweigh the costs and that the fees generated contribute to safety and the provision of facilities;
- retaining licensing of ship pilots;
- increasing competition in the supply of ship pilot services by allowing the monopoly agreement for the provision of pilotage services to expire, supported by provisions in legislation aimed at ensuring safety;
- establishing performance-based standards for ship crewing; and
- retaining the provisions for recreational vessels.

The Victorian Government accepted all of the recommendations in the final report, but has deferred full implementation of the recommendations pending the outcome of a review of port reform since the mid-1990s. The review has focused on the *Port Services Act 1995*, which established new corporatised entities as successors to the old port authorities. The review is examining the structure and operation of Victorian ports. Victoria expects the drafting of the legislative amendments to begin in the second half of 2002 and the legislation to be ready for the autumn 2003 session of Parliament. Victoria has not completed the recommended reforms at 30 June 2002, but has agreed to remove some significant restrictions and is making progress in achieving this objective. The Council will finalise its assessment of Victoria's compliance in 2003.

Queensland

Queensland has reviewed several laws relating to ports and shipping and has taken or is undertaking the following reforms.

- The Harbours (Reclamation of Land) Regulation 1979, under the *Harbours Act 1955*, provides for approval procedures for activities in tidal waters (for example, land reclamation and harbour works). The Government originally intended to remove the Regulation by 30 December 2000, but extended it to the end of 2002 to enable the Integrated Development Approval System and coastal legislation to incorporate the approvals provisions. The *Coastal Protection and Other Legislation Amendment Act 2001* repealed the remaining provisions of the Harbours Act. The Council considers that this reform meets CPA clause 5 obligations.

- The Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*, provides for harbour towage restrictions. The review of the Regulation recommended allowing individual ports flexibility and discretion for exclusive licensing as conditions warrant. The Government is considering its response. It has not completed reform activity at 30 June 2002, so is still to meet its CPA clause 5 obligations. The Council will finalise its assessment in 2003.

- The review of the Transport Infrastructure Act provisions relating to the potential restrictions on port activities outside port limits reported in July 2001. The reviewed provisions limit port activities of a substantial nature to authorised ports. When the legislation was enacted, the primary concern was that new ports might be developed while existing ports had excess capacity. The potential for adverse environmental impacts of more ports was also a consideration. The review recommended no change and the Government has accepted this recommendation, even though it has other legislation that imposes identical requirements. While Queensland's legislation review and reform activity does not fulfil CPA clause 5 commitments, the impact on competition may be negligible. In as much as the restrictions in the other legislation[28] which mirror these restrictions are in the public interest there is no need for further NCP action from Queensland in relation to the Transport Infrastructure Act.

- The *Transport Operations (Marine Safety) Act 1994* and the Transport Operations (Marine Safety) Regulation 1994 regulate pilot services within ports. A review of these Acts recommended some pro-competitive

[28] There were 12 Acts identified in the review report which together mirror the restrictions in that part of the Transport Infrastructure Act under review. Two of these are Commonwealth Acts. Of the other ten, six have been included in the Queensland legislation review schedule and the Council has assessed five of these as meeting CPA obligations. The Council is awaiting the Government's response to the review of the Land Act 1994.

amendments after a three-year transition period during which responsibility for pilotage services would be transferred from the Queensland Department of Transport to port authorities. The review report recommended that the Government retain responsibility for marine pilot licences and give each port authority the power to determine service delivery arrangements and pilotage fees. The new arrangements took effect on 1 July 2001. The Council considers that Queensland has met its CPA clause 5 obligations in this matter.

- The *State Transport (People Movers) Act 1989* provides for licences and agreements for the installation of people movers. Queensland's review of the legislation recommended repealing the Act but retaining provisions to ensure compliance with natural justice (for existing licence holders). The Act has been included for repeal in the Transport Legislation Amendment Bill 2001. Repeal would meet Queensland's obligations under CPA clause 5. After consulting with existing operators, however, the Queensland Department of Transport is re-examining the decision to repeal the Act. Acknowledging that the Act remains listed for repeal, the Council will finalise its assessment of Queensland's compliance in 2003.

Western Australia

The Western Australian Government has repealed the eight Acts that governed Western Australia's major ports, replacing them with the *Port Authorities Act 1998*. As part of the reform, port authorities were commercialised and became subject to local and federal government rate equivalents and all State taxes. Further, exclusive licensing provisions for port services, such as port towage and pilotage, can now occur only where the Minister considers that the public benefits of such exclusivity outweigh public costs. The Council considers that these actions by Western Australia meet its obligations under CPA clause 5.

Western Australia's proposed Maritime Bill will replace several other Acts and will introduce new legislation governing maritime activity. The Maritime and Transport Legislation Amendment Bill presented in conjunction with the Maritime Bill, will repeal the following legislation:

- the *Harbours and Jetties Act 1928*;
- the *Jetties Act 1926* and Regulations;
- the *Lights (Navigation Protection) Act 1938*;
- the *Marine and Harbours Act 1981* and Regulations;
- the *Marine Navigation Aids Act 1973*;
- the *Pilots Limitation of Liability Act 1962*;
- the *Marine Act 1982*; and

- the *Shipping and Pilotage Act 1967* and Regulations.

These two Bills were introduced into the previous Parliament in 1999 and have been reinstated into the new Parliament. Passage of the Bills will mean Western Australia will have fulfilled its CPA clause 5 obligations. Acknowledging that Western Australia has progressed this matter substantially, the Council will finalise the assessment of compliance in 2003.

South Australia

South Australia passed legislation for the sale/lease of the South Australia Ports Corporation in December 2000. The *SA Ports Corporation Act 1994*, which applied to the Ports Corporation's activities, is scheduled for repeal during 2002.

The *Harbors and Navigation Act 1993* governs the operations of South Australian harbours and facilities. It provides for harbour management, charges, vessel crewing, registration of vessels and licensing of pilot services, and specifies other vessel safety requirements in South Australian ports. South Australia has completed a review of this Act. The Government is considering amendments to the legislation.

South Australia has not completed its review and reform activity of ports and shipping legislation so the Council considers that it has not met its clause 5 obligations for 2002. South Australia has made progress, however, and the Council will finalise its assessment in 2003.

Tasmania

Tasmania repealed its *Marine Act 1976* in 1997 and replaced it with three pieces of legislation: the *Marine and Safety Authority Act 1997*, the *Port Companies Act 1997* and the *Marine (Consequential Amendments) Act 1997*. These Acts establish:

- the Marine and Safety Authority, which ensures the safe operations of vessels, provides and manages marine facilities and manages the environmental issues relating to vessels; and

- companies to provide port and shipping facilities and services to Tasmania.

Tasmania advised that these Acts have been assessed under the State's legislation gatekeeper requirements.

Tasmania also undertook a minor review of the *Roads and Jetties Act 1935* and found that the Act's restrictions on competition (relating to limited access provisions) are in the public interest. This review meets the CPA clause 5 obligations.

The Northern Territory

The Council reported in 2001 that it considered that the Northern Territory's actions in relation to the *Marine Act* met the CPA clause 5 obligations. The Northern Territory has continued to progress review and reform activity relating to ports legislation since the 2001 NCP assessment.

The review of the *Darwin Port Corporation Act* and associated legislation — the Port Bylaws, the Harbour Craft Bylaws and the *Darwin Port Authority Amendment Act* — has been completed and the reforms have been implemented, including the repeal of the Harbour Craft Bylaws. The Northern Territory has completed its CPA clause 5 obligations.

The *Marine Pollution Act* was assented to in 1999. It aims to protect the coastal and marine environment by minimising pollution from shipping. The Northern Territory's review of the Act found that it does not significantly restrict competition but imposes some small compliance costs on shippers and regulatory costs on the Government. The review concluded that these costs are small compared with the wider community benefit to the environment and public health. The Council considers that the Northern Territory has met its CPA clause 5 obligations regarding the Marine Pollution Act.

Table 5.5: Review and reform of legislation regulating port, marine and shipping activity

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	Part X of the *Trades Practices Act 1974*	Industry-specific legislated industry code exempts shipping conferences from ss 45 and 47 of TPA (with exception of third line forcing provisions). Conferences allow liner shipping companies to coordinate their services, set joint freight rates, pool earnings and costs, establish loyalty agreements with customers, rationalise capacity and restrict new entrants to the conference agreements. Australia's trading partners also exempt conferences from competition law.	The Productivity Commission completed review in 1999. It concluded that restrictions in part X are in the public interest because they result in Australian shippers obtaining quality services at the best possible prices and because there are no more efficient ways of achieving these results. The Productivity Commission recommended various improvements to part X to clarify the scope of the exemptions from the TPA with regard to land-based activities. These would extend the range of sanctions available to the Minister in the event of a breach of an undertaking by a conference.	*Trades Practices Amendment (International Liner Cargo Shipping) Act 2000* was enacted on 5 October 2000. It picks up, with some minor changes, all the recommendations made by the Productivity Commission. The Act limits the exemption relating to rate setting by more clearly defining the service to which the exemption applies. Exemption covers terminal-to-terminal services solely for ocean transport and cargo handling at the terminal. Definition of terminal was widened to include terminals away from ports where exports/imports are made/distributed. Exemptions do not apply to inland haulage rates. Act changes arrangements for stevedoring conferences. There are exemptions to endorse current stevedoring practices. Generally, importers are given similar countervailing protection from the TPA. The Act grants additional powers to the Minister and the Australian Competition and Consumer Commission to review agreements that may result in an unreasonable reduction in shipping services and/or an unreasonable increase in liner shipping freight prices. Act also repeals the section that prohibited price discrimination.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Australian Maritime Safety Authority Act 1990*		Review was completed in 1997. It recommended that the Government continue to undertake the safety regulatory functions of Australian Maritime Safety Authority and that the current administrative arrangements should continue (with the board able to review the scope to contract out administrative activities).	Recommendations have been implemented.	Meets CPA obligations (June 2001).
	Shipping Registration Act 1912	Provides for registration of ships in Australia.	Review was completed in 1997.	The Government accepted all of the recommendations and is implementing legislative amendments. Industry, however, raised concerns about the financing implications of new legislation, especially for mortgages.	Council to finalise assessment in 2003.

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Navigation Act 1912*	Provides a legislative basis for many of the Commonwealth's responsibilities for maritime matters including ship safety, coastal trade, the employment of seafarers and shipboard aspects of the protection of the maritime environment. It also regulates wreck and salvage operations, passengers, tonnage measurement of ships and a range of administrative measures relating to ships and seafarers. Part VI relates to processes for engaging in coastal trade.	The coastal trade provisions of part VI of the Act were scheduled for review in 1998-99 and the Shipping Reform Group considered these provisions in its report. Accordingly, a comprehensive review of the other parts of the Act was substituted for part VI review. The Act was reviewed in two stages. The first stage considered the repeal of matters that impede shipping reform or are inconsistent with the concept of company employment. This was completed in 1998. The second stage was a comprehensive review of the Act (except for part VI dealing with coastal trade) and was completed in June 2000. The report was publicly released in August 2000. The review found that the benefits of regulating ship safety and environmental protection outweigh the potential costs of restrictions on competition.	Stage one review led to the Navigation Amendment (Employment of Seafarers) Bill 1998. The Bill removes the employment-related provisions in the Act that are inconsistent with the *Workplace Relations Act 1996* and the concept of company employment. The Bill was introduced into Parliament on 25 June 1998. During the Senate debate on the Bill, a significant number of items were rejected. No further action was taken on the Bill. The Government is considering the recommendations of the second-stage review.	Council to finalise assessment in 2003.

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Marine Safety Act 1998*	Provides for vessel operations, licensing and navigation. Regulates the use of vessels, motors, marking of load lines and the carriage of certain equipment. Provides for licensing of pilots and navigation requirements. The Act repeals and consolidates: *Commercial Vessels Act 1979*; *Maritime Services Act 1935*; *Marine Pilotage Licensing Act 1971*; *Marine (Boating Safety — Alcohol and Drugs) Act 1991*; and *Navigation Act 1901*.	NCP review is to be undertaken 12 months after the Act is fully commenced.		Council to assess progress in 2003.
	Ports Corporation and Waterways Management Act 1995	Provides for marine administration, safety, port charges and pilotage.	Statutory and NCP reviews were completed and presented to the Minister in December 2001.		Council to finalise assessment in 2003.
	Commercial Vessels Act 1979	Provides for the use of certain vessels.	Review not required.	Act was repealed and replaced.	Meets CPA obligations (June 2001).
	Maritime Services Act 1935	Provides for harbour operations.	Review not required.	Act was repealed and replaced.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Marine Pilotage Licensing Act 1971*	Provides for pilotage.	Review not required.	Act was repealed and replaced.	Meets CPA obligations (June 2001).
	Navigation Act 1901	Restricts market conduct and entry.	Review not required.	Act was repealed and replaced.	Meets CPA obligations (June 2001).
	Marine (Boating Safety-Alcohol and Drugs) Act 1991	Provides for using vessels under certain conditions.	Review not required.	Act was repealed and replaced.	Meets CPA obligations (June 2001).
Victoria	*Marine Act 1988*	Provides for pilotage, licensing of pilots and harbour masters, and vessel registration.	Review was completed in 1998. It recommended the retention of vessel registration, amendments to licensing standards and the discontinuation of the monopoly pilotage agreement.	Recommendations have been accepted but new legislation is not yet in place.	CPA obligations will be fully met when legislation in place. The Council will finalise its assessment in 2003.
	Transport Act 1983 (passenger ferry services)	Provides for ferry operation.	Review completed.	Act was repealed.	Meets CPA obligations (June 2001).
Queensland	Harbours (Reclamation of Land) Regulation 1979	Provides for approval procedures for activities in tidal waters (for example, land reclamation and harbour works).	Not for review	Act was repealed with certain approval provisions incorporated in other existing legislation.	Meets CPA obligations (June 2002).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provides for harbour towage restrictions.	Review completed.	Cabinet submission was prepared for March 2002.	Council to finalise assessment in 2003.
	Transport Infrastructure (Ports) Regulation 1994 under the *Transport Infrastructure Act 1994*	Provides for port activities outside of port limits.	Review was completed in 2001.	No reforms were proposed.	Does not meet CPA obligations (June 2002).
	Transport Operations (Marine Safety) Act 1994 Transport Operations (Marine Safety) Regulation 1994	Provides for marine safety, pilotage services.	Review was completed in 1999.	Legislative amendments took effect from 1 July 2001.	Meets CPA obligations (June 2002).
	State Transport (People Movers) Act 1989	Provides for licences and operational requirements for vehicles.	Review is under way.	The Act has been included in the schedule for repeal in the Transport Legislation Amendment Bill 2001, scheduled for April 2002. After consultation with both existing operators in 2001, however, the Government is re-examining whether to repeal the Act.	Council to assess progress in 2003.
	Sea Carriage of Goods (State) Act 1930	Provides for operating requirements for the carriage of sea goods.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Port Authorities Act 1998*	Provides for pilotage, licensing, planning and borrowing.	Review was completed in 1997. It concluded that the objectives of the legislation could not be achieved by means other than the licensing restrictions. Act repeals individual port Acts.	No reform is planned.	Meets CPA obligations (June 2001).
	Jetties Act 1926 and Regulations	Licensing, competitive neutrality.	No review undertaken.	Act is to be repealed pending the enactment of the Maritime Bill.	Council to finalise assessment in 2003.
	Lights (Navigation) Protection Act 1938	Licensing.	No review undertaken.	Act is to be repealed.	Council to finalise assessment in 2003.
	Marine and Harbours Act 1981 and Regulations	Provisions for harbour operations.	Review was completed in 1999.	Act is to be repealed by the Maritime and Transport Legislation Amendment Bill.	Council to finalise assessment in 2003.
	Ports (Model Pilotage) Regulations 1994		Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Ports Function Act 1993	Restricts market conduct.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Shipping and Pilotage Act 1967 and Regulations	Provides for pilotage services.	Review was completed in 1999.	Act is to be repealed by the Maritime and Transport Legislation Amendment Bill.	Council to finalise assessment in 2003.

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Albany Port Authority Act 1926* and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Bunbury Port Authority Act 1909 and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Dampier Port Authority Act 1985 and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Fremantle Port Authority Act 1902 and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Geraldton Port Authority Act 1968 and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
	Marine Act 1982	Provides for harbour operations.	Review was completed in 2000.	Act is to be repealed by the Maritime and Transport Legislation Amendment Bill.	Council to finalise assessment in 2003.
	Shipping and Pilotage Act 1967 and Regulations	Governs pilotage services (licensing, competitive neutrality issues).	Not for review.	Act is to be repealed by the Maritime and Transport Legislation Amendment Bill.	Council to finalise assessment in 2003.
	Port Hedland Port Authority Act 1970 and Regulations	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Esperance Port Authority Act 1968*	Restricts market conduct and market entry.	Not for review.	Act was repealed.	Meets CPA obligations (June 2001).
South Australia	*South Australian Ports Corporation Act 1994*	Restricts market conduct and market entry.	Divestment of Ports Corporation occurred in November 2001. The *South Australian Ports (Disposal of Maritime Assets) Act 2000* includes a provision to enable the Governor to repeal the South Australian Ports Corporation Act 1994.	Parliament passed legislation for the lease/sale of the corporation in December 2000. The Act is likely to be repealed during 2002.	Council to finalise assessment in 2003.
	Harbours and Navigation Act 1993	Provides for harbour operations.	Review was completed in 1999.	Intergovernmental agreement made for national moves to develop consistent legislation.	Council to finalise assessment in 2003.
Tasmania	*Marine Act 1976*	Restricts market conduct and market entry.	Completed.	Act was repealed and replaced by the *Marine and Safety Authority Act 1997*, the *Marine and Safety Authority Act 1997* and the *Marine (Consequential Amendments) Act 1997*	Meets CPA obligations (June 2001).
	Roads and Jetties Act 1935	Provides for access restrictions.	Minor review was conducted. It recommended retaining access restrictions in the public interest.	Recommendations have been accepted.	Meets CPA obligations (June 2001).
	Hobart Bridge Act 1958		Completed.	Act was repealed.	Meets CPA obligations (June 2001).
	Port Huon Wharf Act 1955	Provides for access restrictions.	Completed.	Act was repealed.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Darwin Port Corporation Act*	Establishes the Darwin Port Authority. Prescribes functions and powers: monopoly powers; licensing arrangements and fees; issue, renewal and cancellation of stevedoring licences; control of shipping movements in port; exemption from local government charges; harbour craft bylaws; vessels engaged in commercial activities (safety issue); exemptions from pilotage requirements; partial exemption from the Corporations Law.	Review was completed in 2001.	Most recommendations were accepted. Recommendation to remove the licensing of stevedores was not accepted. The Government considered licensing to be most cost-efficient way of monitoring environmental health and safety at Darwin Port.	Meets CPA obligations (June 2001).
	Darwin Port Authority Act and Bylaws			Legislation was replaced by the Darwin Port Corporation Act in 1999 (see above). Repeal of the legislation completed in mid-2002.	Meets CPA obligations (June 2001).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Marine Pollution Act*	The purpose of the Act is to protect the Northern Territory's marine and coastal environments by minimising intentional and negligent discharges of ship-sourced pollutants through giving effect to the MARPOL international convention dealing with pollution by oil, noxious liquid substances in bulk, harmful substances in packaged form, sewage and garbage. With the exception of Australian Defence Force and a warship, naval auxiliary or other ship owned or operated by a foreign country and used, for the time being, only for government, noncommercial service of the country, the Act applies to all ships plying Northern Territory coastal waters.	Review was completed in September 2001. It found that the restrictive elements of the Act are justified under NCP principles.	The Government endorsed the review's recommendations.	Complies with CPA obligations (June 2002).

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Marine Act* and Regulations	Applies national uniform shipping law codes. Provides for licensing of certain commercial operations (part V), certificates of survey (s. 79(a)), permits for the operation of hire-and-drive vessel (s. 4), certificates of competency (coxswain) (schedule 3), certificates of competency (masterclass-all) (Regulation 9).	Review was completed in 2001. It found that restrictions in the Act are in the public interest.	The Government accepted the review recommendations.	Meets CPA obligations (June 2001).

Competitive neutrality

Most government regulation of ports and shipping has evolved from statutes developed in the early to mid-1900s. Then, governments often insulated their businesses from many of the pressures facing private sector firms; for example, many government-based institutions were given tax-free status even though they might have marketed and sold products and/or services.

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

The Council's 2001 NCP assessment found that governments had mostly completed the process of establishing their port authorities as government-owned corporations subject to competitive neutrality principles (NCC 2001). No government competitive neutrality complaints mechanism received complaints about port authorities during 2001-02, confirming that Council's 2001 finding that governments' process of corporatising ports and applying competitive neutrality principles had proceeded satisfactorily.

For the 2002 NCP assessment, the Council indicated that it would monitor some residual implementation questions in the NCP 2001 assessment. These questions related to Victoria's progress with the review of the Port Services Act, the tax treatment of Western Australian ports and the privatisation of the South Australian ports. In addition, the review of the Darwin Port Corporation Act has raised some competitive neutrality issues. This assessment addresses these matters.

Victoria

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

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

The Act provides for access regulation, the separation of regulatory and commercial functions, and the integration of commercial ports into the broader regulatory environment. The Victorian Government has undertaken an independent review of its port reforms, aimed at improving the effectiveness and efficiency of ports. A report detailing review

recommendations was presented to the Minister for Ports for consideration, in consultation with the Treasurer and the Minister for Finance, in December 2001. The report has not been publicly released.

The Council reported in 2001 that it considered that Victoria had fulfilled its clause 3 obligations for the Melbourne Port Corporation and the Victorian Channels Authority. If the review of the Act recommends changes to the current arrangements, however, the Council may need to reconsider its assessment.

Western Australia

The Western Australian Government controls essential marine transport infrastructure through its ownership of regional and metropolitan port authorities. The Government stated that it is committed to ensuring a competitive and efficient ports system. As part of the reform process, Western Australia commercialised its port authorities. The ports are subject to all federal and State taxes and local government rates (or equivalents). The Council considers that Western Australia has met its clause 3 obligations.

South Australia

The SA Ports Corporation managed and owned 10 ports in South Australia. The South Australian Government recognised that the corporation was a significant Government entity with business and regulatory interests and powers. It corporatised the port entity with a view to improving its performance. Subsequently, the Government has privatised the operations at the seven main ports and enacted legislation to repeal the South Australia Ports Corporation Act. Responsibility for the remaining three ports — Cape Jervis, Penneshaw and Kingscote — has been transferred to Transport SA. South Australia has not indicated what competitive neutrality processes apply to these three ports.

Northern Territory

The Northern Territory Government implemented competitive neutrality principles mainly by commercialising all significant Government business operations (called Government business divisions in the Northern Territory). The Darwin Port Authority was established as a Government business division in 1995. The authority's title was changed to the Darwin Port Corporation in 1995 following the implementation of further competitive neutrality reforms, the adoption of a commercial charter and the appointment of a commercial board of directors.

The review of the Darwin Port legislation recommended removing the Port Corporation's exemption from local government taxes and charges. In

response to the review, Darwin Port Corporation began paying local government rate equivalents from 1 July 2001. The Government is also considering application of the Government Owned Corporations framework to the Corporation.

Structural reform of port authorities

Over recent years, several jurisdictions have privatised or considered privatising their port authorities. Some governments have also looked at introducing third party access regimes that cover various port services. Access regimes are a form of regulation aimed at introducing competition in markets supplied by natural monopoly infrastructure.[29] Both privatisation and the introduction of competition via third party access trigger obligations under the CPA clause 4 (see chapter 2).

In the 2001 NCP assessment, the Council found that New South Wales, Victoria, Queensland, Western Australia, Tasmania and the Northern Territory had met their CPA clause 4 structural reform obligations relating to ports.

South Australia

South Australia reviewed the structure of its ports before taking an in-principle decision to lease/sell the SA Ports Corporation. The Government enacted legislation for the lease/sale in December 2000. As part of the lease/sale arrangements, the Government introduced a legislated third party access scheme covering maritime services. These services include channels, defined common user berths, berths adjacent to grain handling facilities and grain handling facilities (belts). South Australia has sought certification, in accordance with clause 6(3) of the CPA, of the State-based access regime contained in the legislation for the lease/sale. The Council is considering this application.

As the Council noted in the 2001 NCP assessment, these developments triggered the structural review obligation under clause 4 of the CPA. South Australia has subsequently undertaken a clause 4 review of its ports structure. The review is supported by a scoping review undertaken by SBC Warburg Dillon Read and Fay Richwhite Securities Ltd.

The review found that it is preferable to sell the ports as a group. It considered that disaggregation would have several adverse effects (including damaging the viability of regional ports, increasing the cost of port services to the South Australian community and reducing the overall sale price) and

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

would not increase competition. The scoping study considered that structural reform through the separation of the ports held by Ports Corporation was unlikely to result in effective interport competition. The study noted the regional nature of the ports and their co-location with commodity production or commodity bulk storage/handling facilities. In most cases, these bulk ports are highly specific to regional production, which limits the scope for interport competition. The study noted some competition in commodity trade between the Ports Corporation facilities and the port of Portland in Victoria. It concluded, however, that disaggregation of the Ports Corporation ports would be unlikely to add to these competitive pressures.

The study also noted some competition in the container trade between the Ports Corporation ports and the ports of Melbourne and Fremantle. It concluded, however, that the nature of the scale economies in container services means that disaggregation of Ports Corporation's existing asset base would be unlikely to facilitate the introduction of an additional competing container facility into South Australia.

South Australia's CPA clause 4 review accepted the recommendations of the scoping study, and the Government privatised the ports as a group. South Australia told the Council, however, that bidders had the option of bidding for all or any of the ports and that nothing prevents the successful bidder, Flinders Ports, from disaggregating the ports and selling them individually. The Council considers that South Australia has met its CPA clause 4 obligations.

Air transport

Air transport industries are generally characterised by a mix of government and private ownership, with governments regulating aspects of both industries. Airports are both government and privately owned, with some only recently privatised. Private operators own the airlines. Air traffic control is provided by a Government monopoly.

Price regulation of aeronautical services

The Council has considered price regulation of airports in the context of the privatisation of airports. This issue is still relevant for the privatisation of Sydney (Kingsford Smith) airport.

The 1997 and 1998 changes to airport ownership and the structure of the Federal Airports Corporation included transitional price regulation measures to allow parties to adjust to the new operating environment for airports. Price regulation comprised a five-year, CPI–X annual cap on the prices of

aeronautical services provided at 11 of the largest airports, except Sydney (Kingsford Smith). The cap was complemented by special access arrangements designed to facilitate new airline entrants. Aeronautical services were also subject to price notification under the *Prices Surveillance Act 1983* at the 11 price capped airports and Sydney (Kingsford Smith).

Following a Productivity Commission review of airport pricing regulation, the Government announced it would modify some of these arrangements. From 1 July 2002, Melbourne, Brisbane, Perth, Adelaide, Canberra and Darwin airports no longer have price caps on their aeronautical services but, along with Sydney (Kingsford Smith) airport, are subject to price monitoring for five years. An independent review will be carried out towards the end of the five-year period to determine the need for future price regulation. In addition, the special access arrangements under s. 192 of the *Airports Act 1996* will lapse and part IIIA of the TPA will apply. The Government reserved its right to reimpose price controls if the airport operators abuse their market power by unjustifiably raising prices.

Sydney Basin airports (Commonwealth)

In the 2001 NCP assessment, the Council found that the remaining matter for review under the CPA clause 4 is the appropriate structure of the Sydney Basin airports (including any second airport) before privatisation. The Commonwealth gave an undertaking that its future processes would consider structure and competition issues for Kingsford Smith Airport and any second international airport.

On 29 March 2001, the Commonwealth Government announced that Kingsford Smith Airport would be sold as a 100 per cent trade sale to be completed in the second half of 2001. Further, the new owner would be given the first right of refusal by the Commonwealth to build and operate any second major airport within 100 kilometres of the Sydney central business district. The other Sydney Basin airports (Bankstown, Camden and Hoxton Park) will also be sold through a 100 per cent trade sale, to be completed in the second half of 2002.

The airport sale process for Sydney Airport began in early 2001 and binding bids were originally due by 17 September 2001. Following the terrorist attacks on the United States of America on 11 September 2001 and the subsequent level of disruption in the global financial markets and aviation sectors, the Government deferred the sale until 2002.

In accordance with the privatisation timetable, the Department of Finance undertook a CPA clause 4 review of the Sydney Airports Corporation.

As a Corporations Law company subject to the Commonwealth's government business enterprise accountability guidelines, the corporation is required to earn a fair and reasonable return on the investment of its owner, the Commonwealth. Unlike the privatised airports, the Government did not place

a price cap on the corporation's aeronautical charges, given significant recent re-development and continued Government ownership. In setting out its sale objectives for Sydney Airport, the Government announced that the ACCC would ensure prices for regional carriers at Sydney Airport would be maintained during the sale process and would not increase in any year in excess of increases in the CPI–X.

In the 2001 NCP assessment, the Council had only one matter outstanding for the CPA clause 4 review: the structure of the Sydney airports. While the Commonwealth separated the Sydney Airports Corporation from the other existing airports, the proposed second Sydney airport was still an issue. The Commonwealth argued that the development of the second airport would be unlikely without some level of subsidy from either the existing airport (Kingsford Smith Airport) or directly from the Government. Drawing from international experience on the development of second airports at major cities, the Commonwealth argued that the involvement of existing airport is essential for the success of the development of the second airport. It proposed:

> *… prior to and during its development, the SSA [second Sydney airport] should be associated with KSA [Kingsford Smith Airport]. KSA should have rights and potentially obligations in respect of the future development of any SSA. These should include:*
>
> - *a right of first refusal on any proposal (including by the Commonwealth or a State government) to develop a competing facility within 100km from the Sydney CBD;*
>
> - *the Commonwealth considers that a second airport will not be necessary within the next ten years, but the Commonwealth will again review Sydney's airport needs in 2005.* (Department of Finance 2002 p. 24.)

The Council considers the Commonwealth to have met its CAP clause 4 obligations.

Airservices Australia

Airservices Australia is a Commonwealth Government-owned business providing air traffic management, air navigation support services and aviation rescue and fire fighting services at airports. Under the Civil Aviation Regulations 1988 only Airservices and the defence forces can provide air traffic control services.

In the 2001 NCP assessment, the Council noted moves by the Commonwealth towards introducing contestability in the provision of the services provided by Airservices Australia. This was dependent on the development of a regulatory framework to ensure the safe provision of air traffic control services and aerodrome rescue and fire fighting services by the Civil Aviation Safety Authority (CASA). CASA has subsequently developed a safety regulatory

framework for the provision of air traffic control, aerodrome rescue and fire fighting and related services. The Governor-General signed these regulations on 26 June 2002. Once these regulations are in place and the transition period provided for in the regulations has passed, aerodrome operators will become responsible for ensuring the provision of aerodrome rescue and fire fighting services.

The Government is expected to consider the structure and timing of the corporatisation of Airservices in the near future. It will also need to establish a separate airspace directorate to take over Airservices Australia's remaining regulatory function of airspace designation once Airservices Australia is corporatised.

Once this framework is in place and the necessary legislative amendments have been made, the Government will consider the timing for the introduction of competition for alternative service providers for tower-based air traffic control services. En-route and terminal approach services are, and will remain, an Airservices Australia monopoly.

Regulation of regional air passenger transport routes

There is some remaining regulation of intrastate air passenger transport routes. The regulation restricts competition by granting rights to service particular regional or remote locations.

Queensland

Queensland completed an NCP review of the *Transport Operations (Passenger Transport) Act 1994*. The Act covers public transport operations in Queensland, including buses, taxis, limousines and aviation. While air transport in Queensland is largely deregulated, services to some remote areas are restricted. The services are regulated through exclusive service contracts which specify minimum service levels, such as aircraft type, frequency of service and fares. Each contract is for five years, after which it is retendered.

The review found that these restrictions are in the public interest because the contracted operators provide services which would otherwise not be available, or would only be available at greater cost or with lower service levels if the contracts were not exclusive. The review report argued that, because the contract to provide these services is open to tender every five years (that is, there is competition for the market), the exclusive service contract is likely to provide a net community benefit.

The Government is considering the review recommendations. The Council will consider the Government's response in the 2003 NCP assessment.

Western Australia

Western Australia has completed a review of the *Transport Co-ordination Act 1966*. The Act provides for the licensing of vehicles used for commercial purposes, including aircraft, and the regulation of the transport services provided by these vehicles.

The Act allows for the Minister to grant a licence in respect of an aircraft. The review report recommended that this general provision be circumscribed so that licences are required only where there is a public benefit. The Government has endorsed this recommendation and this section of the Act is to be repealed and replaced with provisions which relate the requirement for a licence to the public interest. The Council will finalise its assessment of the review and reform activity in the 2003 NCP assessment.

Western Australia reported that the collapse of Ansett in September 2001 has had a significant impact on the intrastate air transport market in Western Australia. Western Australia is therefore reviewing its intrastate aviation policy, including the application of the licensing provisions in the Transport Co-ordination Act.