10 Retail trading arrangements

There are three areas of retailing in which legislation significantly restricts competition. Prescribed shop trading hours prevent sellers from trading at the times they consider appropriate and include provisions that discriminate between sellers on the basis of location, size or product sold. Liquor licensing laws frequently preclude entry by responsible sellers and favour some sellers at the expense of others, and legislation governing petrol retailing restricts entry and reduces the ability of sellers to raise and lower prices.

Shop trading hours

Historically, governments have restricted shop trading hours for reasons including observance of the Sabbath, protection of small businesses from competition from larger competitors and to reduce the need for shop employees to work outside traditional working hours. Pressure to change laws restricting trading hours has arisen from a range of sources, from retail business owners to consumer groups. A significant driver of reform is changing social and work patterns such as increasing numbers of dual-income households and more flexible and longer working hours. All governments, except the Northern Territory which has no legislation that specifically regulates trading hours, included trading hours legislation on their legislation review programs.

Legislative restrictions on competition

At the commencement of the National Competition Policy (NCP) legislation review program, shop trading hours varied significantly across Australia. Jurisdictions other than the Northern Territory had various arrangements, including designated days for late night shopping and restrictions on Sunday trading. Often, central city and tourist shopping precincts had fewer restrictions than those in suburban and rural areas and discrimination occurred between retail outlets according to their size or the product they sold. Many of these restrictions have been removed following reviews which found that they did not provide a net public benefit.

Victoria introduced extended trading hours in 1996 following a review and the ACT repealed its *Shopping Hours Act 1996* in 1997 after finding that its restrictions did not provide a net public benefit. In the 1999 NCP assessment,

the Council concluded that Victoria and the ACT had fully met their NCP obligations regarding trading hours. No assessment was required for the Northern Territory.

The following significant legislative restrictions on competition were in operation at 30 June 2002:

- In Queensland, daily trading hours for large, nonspecialist shops are prescribed and these shops cannot trade on Sunday if they are outside designated tourist precincts. Queensland introduced uniform Sunday trading hours for these shops in south-east Queensland from 1 August 2002.

- Western Australia restricts daily trading hours and allows large nonspecialist shops to trade on Sundays only if they are located within tourism precincts and trade between prescribed hours. Restrictions do not apply above the 26th parallel of South Latitude.

- South Australia restricts Monday-to-Saturday trading hours and prohibits Sunday trading in Adelaide outside the central business district except on six designated Sundays each year. There is also discrimination among shops on the basis of their size and the merchandise they sell.

- Tasmania prohibits major retailers (shops employing more than 250 people) from trading on Sundays, public holidays and week days after 6 p.m. other than Thursday and Friday. Tasmania has passed legislation to remove these restrictions from 1 December 2002.

These are significant competition questions. The provisions typically discriminate between sellers on the basis of their location, size or product sold. They prevent consumers from shopping at the times they find convenient and prevent businesses that consider they would benefit from extended trading hours (including major retailers, national specialty chains, franchisors and many small businesses) from opening. There is evidence from reviews and from the experience of deregulated jurisdictions to indicate that restrictions reduce retail sales and employment.

Table 10.1 summarises restrictions on trading hours in each jurisdiction and review and reform activity to date.

In addition to restrictions on trading hours, some governments also legislate to restrict trading hours for particular activities, such as the hours in which hawkers and door-to-door sellers may operate. The Council has identified several examples of trading-related legislation which are summarised in table 10.2. All jurisdictions have completed review and reform activity and therefore comply with their NCP obligations for this legislation.

Review and reform activity

New South Wales

The relevant New South Wales legislation is part 4 of the *Factories, Shops and Industries Act 1962*, which restricts the ability of 'general' shops (that is, larger stores not predominantly selling nominated products) to trade on Sundays and public holidays. In practice, exemptions to this restriction are readily granted on the basis of employment effects, potential tourist demand, impact on the community, other planning restrictions on the site, and other relevant factors. There are no restrictions on Monday-to-Saturday trading hours in New South Wales. The outcome is a virtually unrestricted trading hours environment with only a few remaining locality-based restrictions (including Tenterfield, Inverell and Gilgandra).

The New South Wales Government reviewed the legislation and considers that the assessment of applications to remove the locality-based restrictions on shop trading hours involves a satisfactory cost-benefit analysis of each individual case. Under the Act, the Director-General of the Department of Industrial Relations makes the assessment and determination. The Act does not contain specific statutory guidelines for assessing applications, but a department protocol introduced in 1995 requires the department to invite comment from interested parties as part of community and public consultation. This process involves approaching local government authorities, retail industry associations, small business organisations in the affected areas and the relevant trade union. The applicant shopkeeper is required to provide information and data about the exemption sought, using guidelines developed by the department.

Assessment

The extensive use by New South Wales of exemptions from the restrictions in its Act means that trading hours in the State are, in practice, unrestricted. (The Council accepted, in the 2001 NCP assessment, that any anticompetitive effects are negligible.) The remaining restrictions on Sunday trading apply to a limited range of regional centres. New South Wales is reviewing these, using similar criteria to those of the NCP public interest test. The Council nevertheless considered in the 2001 NCP assessment that there may be value in New South Wales removing (redundant) anticompetitive elements of part 4. The New South Wales Government advised that it will assess the appropriateness of retaining part 4 after the regional reviews are complete. The Council considers that New South Wales has met its NCP obligations in relation to shopping hours. It will monitor the outcome of the Government's review of part 4 in the 2003 NCP assessment.

Queensland

Queensland's *Trading (Allowable Hours) Act 1990* places restrictions on:

- Monday-to-Saturday trading hours for 'nonexempt' stores;[1] and
- Sunday trading by nonexempt stores which is prohibited outside major cities and some tourist areas (except hardware stores which are permitted to trade on Sundays but have limited trading hours).

Queensland has not undertaken an NCP review of its legislation. Instead, questions about trading hours are addressed via the Queensland Industrial Relations Commission process for determining applications for extended trading hours. The Act requires the commission to consider a range of criteria when determining an application for extended trading hours. The criteria include the locality of the shop, the needs of the population, tourist demand and the public interest, consumer interest and business interest. In 2000 and 2001, the Queensland Government made submissions to the Queensland Industrial Relations Commission to ensure it is aware of the competition tests in the Competition Principles Agreement (CPA) and of the Government's support for them in relation to trading hours. The Council has indicated that the commission's process for assessing applications is sufficiently public, independent and transparent.

Queensland Industrial Relations Commission decisions on trading hours have resulted in some liberalisation of trading hours arrangements. In October 2000, the commission granted applications for a Statewide extension of trading hours during the Christmas 2000 trading period and for an extension of weekend and public holiday trading hours in the Newfarm area of Brisbane. In December 2001, the commission granted an application for Sunday trading to the local government area of the City of Brisbane. The decision was criticised for disadvantaging traders and consumers in populated areas adjacent to Brisbane. The decision also drew attention to the numerous and inconsistent trading hours zones between the Sunshine Coast area and the Gold Coast area

In February 2002, the Trading (Allowable Hours) Amendment Bill 2002 was introduced into the Queensland Parliament. The Bill overrides the Queensland Industrial Relations Commission's December 2001 decision and legislates uniform Sunday trading hours (from 9 a.m. to 6 p.m.) for the south-east Queensland region from 1 August 2002. The Bill also replaces the word 'regulate' where it appears in the objects of the Act with the word 'decide'. This clarifies that an object of the Act is to decide allowable trading

[1] Exempt shops are retailers predominantly selling particular categories of good nominated in the Trading (Allowable Hours) Act. The list includes antiques, florists, various foods, pet shops, sporting goods, etc. In addition 'independent retail shops' (defined in the Act as shops employing fewer than 20 employees in one location or fewer than 60 Statewide) have unrestricted opening hours.

hours of shops as opposed to regulating hours (which has been interpreted as requiring the restriction of hours).

Assessment

The Council's considers that Queensland has in place an appropriate process for considering changes to trading hours and that Queensland's actions to extend Sunday trading to a considerable area of the State and to clarify the intent of its legislation meet NCP review and reform obligations. The Council will make its final assessment in 2003.

Western Australia

Western Australia's *Retail Trading Hours Act 1987* (and Regulations):

- restricts Monday-to-Saturday trading hours for all categories of shops to within prescribed opening and closing times. Small retail shops and special retail shops have longer opening hours than those of 'general retail shops'; [2]
- prohibits Sunday trading for 'general retail shops' outside tourism precincts; and
- does not apply north of the latitude of 26 degrees.

The Western Australian Ministry of Fair Trading completed a review of the Act in June 1999. The review took 12 months to complete, involved wide consultation with business and the community and received over 1600 submissions. The review report has not been made public. A December 1999 media release by the Minister expressed the then Government's opposition to reform of shop trading hours but did not detail the review's recommendations (Shave 1999).

Western Australia's 2001 NCP annual report, which was the first report by the current Government, stated that 'Western Australia is in the final stages of reviewing legislation that regulates retail trading arrangements. The State is committed to closely examining the benefits and costs of government intervention in relation to these arrangements. Reforms judged to be in the public interest will be implemented'. The annual report further stated that 'The legislation review report of the *Retail Trading Hours Act 1987* is currently being finalised and is expected to be submitted to Cabinet in 2001'. Western Australia's 2002 NCP annual report advised only that the trading hours review report was expected to be submitted to Cabinet before 30 June 2002.

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[2] The Act distinguishes between 'general', 'small', and 'special' retail shops according to their size or types of good sold.

Assessment

At 30 June 2002 — the CoAG target date for completing the legislation review and reform program — there were significant remaining restrictions on trading hours in Western Australia. The Government had not announced a response to its trading hours NCP review and had provided no public interest reasoning to support the existing regulatory regime.

The findings of completed reviews and the experience of jurisdictions with unrestricted trading indicate that Western Australia's current arrangements are likely to be imposing significant costs on the community. There is significant discrimination between categories of traders. Consumers are disadvantaged; they are unable to purchase household items at a time they find convenient. In Sydney and Melbourne where Sunday trading by supermarkets is permitted, around 35 per cent of consumers shop for food and groceries on Sunday whereas in Perth and Adelaide, where only smaller food stores can trade on Sundays, the comparative figure is 7–8 per cent (Jebb Holland Dimasi 2000, p. ii).

Predictions by opponents of change that deregulation in Western Australia would lead to a decline in retail activity and employment are not supported by experience elsewhere. Retail sales growth in the Victoria has averaged 5.6 per cent per year from December 1996 when Victoria removed restrictions, more than double the total Australian average of 2.5 per cent per year recorded over the same period (Jebb Holland Dimasi 2000, p. iii). Following the removal of restrictions, Victoria's trend level of employment in the retail sector expanded by 2–4 per cent to May 1998, while Australia wide retail employment fell by 1 per cent (Productivity Commission 1999b, p. 259). Tasmania's second review of its trading hours arrangements predicts that an increase in retail employment of 1.1 per cent will result from the deregulation of shopping hours (Workplace Standards Tasmania 2002, p. viii).

The Council discussed competition restrictions in trading hours arrangements with the Western Australian Government during the 2002 NCP assessment. The Premier stated that the Government appreciates the need for reform of retail trading arrangements and will take active steps to progress this during 2002-03. The Premier advised the Council that the Government will establish a Ministerial Task Force within the next few weeks to conduct a review of the retail trading hours issue in the context of the changing economic and social climate in Western Australia. This review will also take account of experiences in other jurisdictions. The Premier indicated that the review would be very important to effecting change in Western Australia.

Western Australia has had considerable opportunity over a long period to address its obligations relating to trading hours arrangements. Its legislation contains considerable restrictions on competition, for which the Government has offered no supporting public interest argument. Western Australia therefore has not met its CPA clause 5 obligations in relation to shop trading hours. The Council acknowledges that reform of trading hours arrangements presents some difficulty for the Western Australian Government given

commitments it made during the last election that did not recognise obligations under the NCP. These commitments do not excuse Western Australia from its NCP obligations, which the Premier's statements on the need for reform and on the role of the proposed Ministerial Task Force in achieving policy change appear to recognise.

South Australia

South Australia reviewed its *Shop Trading Hours Act 1977* in 1998. This legislation imposed significant restrictions on trading hours in the Adelaide metropolitan area.[3] South Australia's legislation exempts certain shops from the controls on trading hours based on the size and type of shop.

Arising from the review, the South Australian Government announced new trading hours arrangements, which came into effect in June 1999. These arrangements provided some extension to trading hours for nonexempt shops but retained the following restrictions:

- trading by nonexempt shops in the central business district until 9 p.m., Monday–Friday, but only until 7 p.m. in the suburbs (except for Thursday, when trading is allowed until 9 p.m.); and

- trading on Sundays in the central business district between prescribed hours and in the suburbs on six Sundays a year (whereas exempt shops may trade every Sunday if they consider it worthwhile).

South Australia amended its Act again in December 2000 to extend trading hours for shops in the Glenelg tourist precinct. It did not, however, provide a public benefit explanation for the restrictions still in place (for example, it did not release the 1998 review report) or a detailed comparison of the review's recommendations and the Government's decisions.

During the 2002 assessment, the Council met with the South Australian Treasurer to seek advice on how the Government intended to address outstanding NCP questions relating to trading hours. The Treasurer committed South Australia to revisiting the original retail trading hours review report and exploring options for reform, although he provided no details of the Government's likely approach. Subsequently (11 August 2002), the Minister for Industrial Relations issued a news release stating that the Government will introduce legislation into the current session of Parliament to extend shop trading hours (Wright 2002). The media release indicated that the Government proposes to:

- allow five days of Sunday trading before Christmas and five days of Sunday trading after Christmas;

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[3] Trading hours in South Australia's regional areas are determined by local government.

- extend trading by nonexempt shops in suburban areas to 9 p.m. Monday to Friday

- allow electrical stores within suburban areas to trade on Sundays and public holidays as hardware and furniture shops do currently;

- streamline the current law to remove confusion and reform the current complex system of exemptions; and

- protect retailers in enclosed shopping centres from being required to open for more than 54 hours a week and put Sundays outside of the 'core hours' that a landlord can require a tenant to trade.

Assessment

The Council initially raised its concerns about the restrictions in South Australia's legislation in the 1999 NCP assessment, noting that the Government had not provided a public interest explanation for its restrictions. South Australia's subsequent NCP annual reports also do not provide satisfactory public interest analysis. The 2002 annual report for example states only that:

> *The South Australian Government believes that the benefits achieved through the 1998 amendments and the Glenelg Tourist Precinct proposal represent an outcome that provides greater amenity for the public of South Australia and balances the competing stakeholder interests on this issue. It is also a pragmatic, achievable result which reflects the Parliamentary realities which operate in this State at present.* (Government of South Australia 2002, p. 34)

The discrimination among different retailers (including some who sell the same types of products) in South Australia's legislation is a significant competition issue.

- The Act discriminates between exempt shops, which may trade at any time, and nonexempt shops whose opening hours are prescribed. The criteria for exemption appear arbitrary: for example, an exempt shop must have a floor space of less than 200 square metres; an exempt supermarket must have floor space of less than 400 square metres; shops selling trailers and caravans are exempt, motor vehicle dealers are nonexempt.

- Within the category of nonexempt shops, further discrimination occurs based on location. Nonexempt shops located in the central business district or the Glenelg tourist area may trade on Sunday, those located elsewhere in the metropolitan area are prohibited from opening on Sunday except on the prescribed Sunday trading days.

- Finally, all specialist retailers of hardware and building supplies, furniture, floor coverings and motor vehicle parts and accessories may

open on Sunday. Suburban department stores (that also sell some of these products along with other merchandise) are unable to trade, however.

In addition to inhibiting competition, these arrangements impose costs on retailers and consumers. To trade on Sundays, for example, some suburban retailers of electrical goods and computers have incurred additional legal and accounting costs to split their business into several smaller entities, each with a trading space of 200 square metres or less. The law encourages retailers wishing to trade on Sundays to locate in the central business district and Glenelg, placing upward pressure on the cost of purchasing or renting premises. Consumers are unable to shop at convenient times, and those living in suburban areas must travel to the city or Glenelg if they wish to shop on Sundays. Further, there are likely to be costs to the community in forgone employment opportunities. Large retailers have stated, for example, that they would require over 2000 new employees in South Australia if restrictions were removed (Oakley and Wheatley 2002). The statement by South Australian retailers is consistent with the evidence in Tasmania's report of its review of trading hours arrangements (see below), which found that removing restrictions on trading hours would lead to an increase in retail sector employment in all regions of the State.

It is difficult to see how the reforms announced on 11 August 2002 address the problems identified above. The extension of week night trading does not cater for consumers who find it convenient to shop after 9 p.m., and although the number of Sunday trading days will be increased, Sunday trading for suburban nonexempt shops is still prohibited on 42 Sundays of the year. The proposed reforms appear to do little to rectify the discrimination against large suburban department stores and supermarkets that are prevented from opening on Sundays while businesses selling similar merchandise in the central business district or Glenelg may open. While electrical goods retailers can now open on Sundays (along with specialist hardware, furniture, floor covering and motor vehicle parts retailers), suburban department stores which sell similar merchandise are still unable to trade. The proposed reforms also continue the discriminatory treatment of suburban shopping centres, particularly those with department stores (which are unable to open) as 'anchor' tenants.

The reforms announced by South Australia on 11 August 2002 appear to recognise the confusion caused by the State's current complex system of exemptions. In this regard, the Government appears to be proposing future activity to reform the current legislation. At the time of completion of this assessment report, however, the Council had no details (apart from the news release) of the further action being considered by the Government in relation to reforming exemptions and streamlining the current law. Given this, and that significant restrictions on competition still remain, the Council is unable to conclude that South Australia has complied with its CPA clause 5 obligations in this area. The August 2002 reform package indicates that South Australia intends to further develop its reform program. The Council will complete its 2002 NCP assessment when more details are available.

Tasmania

Tasmania's *Shop Trading Hours Act 1984* prohibited major retailers (those employing more than 250 people) from trading on Sundays, public holidays and week days after 6 p.m, other than Thursday and Friday. Tasmania has completed two NCP reviews of its legislation. The first review consulted extensively and commissioned market research, releasing its report in May 2000 (Workplace Standards Tasmania 2000). The review found that restrictions impose a major constraint on consumer choice and anticipated that their removal would result in additional employment, increased real wages or a combination of these outcomes as the retail sector expands. The report concluded that restrictions on trading hours are not in the public interest and recommended that they be removed.

The Tasmanian Government subsequently asked the review panel to further investigate public interest issues associated with the trading hours restrictions including how the removal of restrictions would affect the independent grocery sector and rural and regional Tasmania. The review panel consulted further with key stakeholders and commissioned additional market research on household shopping patterns. The report of the supplementary review (Workplace Standards Tasmania 2002) confirmed the original review finding that the removal of restrictions on shop trading hours would lead to an increase in retail sector employment in all regions of Tasmania. The report also found that the removal of restrictions would not affect the viability of the vast majority of independent grocery stores in either rural or urban areas.

The original review proposed a 12–18 month adjustment period between when new legislation is introduced into Parliament and when it comes into effect, to help independent supermarkets and convenience stores adjust to the extended trading arrangements and the introduction of the goods and services tax (GST). The supplementary review recommended no delay because the GST had since been introduced and because the impact of deregulation on the independent stores was estimated to be less than initially anticipated.

Following the reviews, Tasmania passed legislation to remove restrictions and allow unrestricted trading except for Good Friday, Christmas Day and before noon on Anzac Day. The legislation allows local governments to conduct a vote, at any time, on retaining restrictions within their area.[4] The changes to Tasmania's legislation will operate from 1 December 2002, to allow any local referendums on shopping hours to be conducted in conjunction with the 2002 local government elections.

[4] The right of shops to open on week nights cannot be removed by local vote. Other restrictions may be introduced if approved at a referendum in which votes are received from more than 50 per cent of eligible voters.

Assessment

Tasmania has implemented review recommendations and has a firm reform schedule in place. The Council assesses Tasmania as having met its CPA clause 5 review and reform obligations in relation to the regulation of shop trading arrangements.

Table 10.1: Review and reform of legislation regulating shop trading hours

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Factories, Shops and Industries Act 1962* (part 4 covers trading hours)	No restrictions on Monday-to-Saturday trading hours. Restrictions exist on Sunday trading and public holiday trading but exemptions are readily granted.	Review of part 4 was completed. New South Wales has advised that a comprehensive public benefit test is in place for the assessment of any remaining restrictions.	Widespread granting of exemptions has reduced the impact of restrictions.	Meets CPA obligations (June 2002).
Victoria	*Shop Trading Act 1987* and the *Capital City (Shop Trading) Act 1992*	Restrictions on Saturday and Sunday trading hours depending on shop type and location.	Review was completed in 1996.	*Shop Trading Reform Act 1996* removed restrictions except for Christmas Day, Good Friday and ANZAC Day.	Meets CPA obligations (June 1999).
Queensland	*Trading (Allowable Hours) Act 1990* and Regulations	Restrictions on Monday-to-Saturday trading hours for nonexempt shops (shops not predominantly selling nominated products). Sunday trading by nonexempt stores is prohibited outside major cities and tourist areas. Restrictions do not apply to independent retail shops (shops employing fewer than 20 employees and fewer than 60 statewide).	Review was not undertaken. The Queensland Industrial Relations Commission determines applications for extended trading hours.	Decisions of the Queensland Industrial Relations Commission to liberalise trading hours resulted in the removal of some restrictions. In February 2002, the Government introduced amendments to the Act providing uniform Sunday trading hours for nonexempt stores in south-east Queensland to take effect in August 2002.	Council to finalise assessment in 2003.

(*continued*)

Table 10.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Retail Trading Hours Act 1987* and Regulations	Restrictions on Monday-to-Saturday trading. Sunday trading is prohibited outside tourism precincts, where it is restricted. No restrictions above the 26th parallel.	Review was completed in 1999. Shop trading hours regulation considered by Cabinet in July 2002. The Government is to establish a Ministerial Task Force 'within the next few weeks' to conduct a review of retail trading hours.	No reform to date.	Does not comply with CPA obligations.
South Australia	*Shop Trading Hours Act 1977*	Significant restrictions exist in, including: controls on the hours during which shops may open; variation in allowed opening hours based on the day of the week; and variation in permitted opening hours depending on shop location, shop size and products sold. Monday-to-Saturday trading hours are restricted. Most Sunday trading is prohibited in the Adelaide metropolitan area except within the central business district, where hours are restricted.	Review was completed in 1998. Review report is not publicly available.	Limited changes took effect from June 1999. Key restrictions were retained. Extended trading hours were introduced in the Glenelg Tourist Precinct in December 2000. In August 2002, the Government announced that further changes would be introduced in the current Parliamentary session. The proposed changes retain the key restrictions with some modifications.	Does not comply with CPA obligations.

(*continued*)

Table 10.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Shop Trading Hours Act 1984*	Major retailers (shops employing more than 250 people) are prohibited from trading during prescribed periods (Sundays, public holidays and weekdays after 6 p.m. other than Thursday and Friday).	Reviews were completed in 2000 and 2002, both recommending removal of restrictions.	Amendments to remove restrictions have been passed and the removal of restrictions will take effect from 1 December 2002.	Meets CPA obligations (June 2002).
ACT	No specific shop trading hours legislation	After a period of liberal trading arrangements, restrictions were re-introduced for larger shopping centres in 1996.		*Trading Hours Act 1962* was repealed in 1997 due to lack of community support for trading hours restrictions.	Meets CPA obligations (June 1999).
Northern Territory	No specific shop trading hours legislation	No restrictions on Monday-to-Sunday trading hours.	Not required.	Not required.	Meets CPA obligations.

Table 10.2: Review and reform of trading-related legislation

Jurisdiction	*Legislation*	*Restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Funeral Services Industry (Days of Operation) Act 1990*	Regulates the days of operation of businesses providing funeral, burial or cremation services.		Act was repealed.	Meets CPA obligations (June 2001).
Queensland	*Hawkers Act 1994* and Hawkers Regulation 1994	Prevents hawkers operating between 6 p.m. and 7 a.m.	A reduced NCP review was completed.	Act is to be repealed.	Meets CPA obligations (June 2002).
Tasmania	*Sunday Observance Act 1968*	Restricts a number of business activities on Sunday.		Act was repealed.	Meets CPA obligations (June 2001).
	Bank Holidays Act 1919	Restricts bank trading days.		Act was reformed consistent with NCP principles.	Meets CPA obligations (June 2001).
	Door to Door Trading Act 1986	Restricts the hours in which door to door sellers can operate.	A minor review of this Act was completed and the restrictive provisions were justified as being in the public interest.		Meets CPA obligations (June 2002).
ACT	*Door to Door Trading Act 1991.*	Restricts the hours in which door-to-door sellers can operate.	Intradepartmental review was completed in 2001. The review concluded that that the restrictions provide a net public benefit.	Act was retained without reform.	Meets CPA obligations (June 2002).
Northern Territory	*Hawkers Act*	Restricts selling by hawkers on land that is reserved or dedicated as a public road.	Review was completed in August 2000.	Bill to repeal was passed in November 2000. Act is to be brought into effect before June 2002.	Meets CPA obligations (June 2001).

Liquor licensing

Governments have historically sought to minimise harm from the consumption of alcohol. Their efforts have included prohibiting consumption by certain members of the community (such as minors), establishing requirements for the responsible sale and serving of alcohol and restricting the number and type of licensed premises and their trading hours.

Licensing laws that prescribe accepted community standards relating to alcohol consumption — such as a minimum age for legal consumption, requirements that liquor retailers be suitable persons with adequate knowledge of the relevant Act, and measures to prevent the sale of alcohol to intoxicated persons — do not raise NCP compliance issues. When assessing governments' compliance with NCP objectives, the Council has not considered regulations imposing requirements in these areas.

On the other hand, licensing laws that do not allow responsible sellers to enter the industry, that discriminate between responsible sellers of similar products/services and that impose arbitrary restrictions on sellers' behaviour do little to achieve harm minimisation objectives. The evidence shows, for example, no clear relationship between the number of outlets selling liquor and the level of consumption.[5] Australia's more recent experience suggests that misuse of alcohol is often better addressed via better drinking environments and more direct targeting of problems such as drink-driving and under-age drinking.

Legislative restrictions on competition

Legislation governing the sale of liquor involves three broad categories of restrictions. First, some restrictions limit entry by potential sellers; a public needs or proof-of-needs test, for example, restricts competition because it requires licence applicants to demonstrate that there is a public need for an additional liquor outlet in a particular area. The test operates to protect existing outlets from new entrants, who must show that existing outlets do not already adequately serve the area. Legislation in New South Wales, Western Australia, South Australia and the Northern Territory contains a needs test that potentially excludes new entrants on the basis of their potential competitive threat to incumbents. There is also direct prohibition of

[5] Australia, Canada and New Zealand are among many developed countries to have experienced a general downward trend in average consumption since the late 1970s. This trend occurred at a time of considerable deregulation of the alcohol industry, generally greater availability of alcoholic beverages and increased numbers of liquor outlets (Roche 1999, p. 39).

particular types of seller. Tasmania, for example, prohibits supermarkets from holding a liquor licence.

A second category of restrictions discriminates between different sellers of packaged (take-away) liquor. In Queensland, only the holders of a general (hotel) licence can sell packaged liquor to the public. In Tasmania, the '9 litre rule' prevents nonhotel sellers of packaged liquor from selling less than 9 litres of liquor in any one sale whereas hotels and hotel bottle shops may sell liquor in any quantity. Victoria's '8 per cent rule' prevented a licensee from holding more than 8 per cent of the total number of packaged liquor licences and may have restricted the activities of the major supermarket chains. In Western Australia, liquor stores cannot open on Sundays, although hotels are able to sell packaged liquor.

A third category of restriction regulates the market conduct of licence holders. In Queensland, hotels are limited to a maximum of three bottle shops, which must be detached from the hotel premises. Each bottle shop must have no more than 150 square metres of display space, and drive-in facilities are prohibited. In South Australia, a condition of a packaged liquor licence is that the licensed premises must be devoted entirely to the sale of liquor and must be physically separate from premises used for other commercial premises. South Australia's review noted the anomaly that liquor could be purchased from a bottle shop which is immediately adjacent to, but separate from a supermarket, but not from a bottle shop within the same four walls as the supermarket (Anderson 1996, p. 19).

Australia has in excess of 8000 hotels, clubs, taverns and bars and almost 4000 packaged liquor outlets. Annual household expenditure on liquor is in excess of $7 billion (ABS 2000b). Legislation that prevents entry, discriminates against some types of competitors and restricts competitive behaviour can have a significant economic impact in an industry of this size.

Review and reform activity

Victoria, Queensland and South Australia have reviewed their legislation and implemented some reform, although the latter two States still have measures that raise compliance questions. Western Australia has reviewed its licensing legislation and proposes to conduct a further review during 2002-03. South Australia has proposed a further review of its remaining restrictions, with the objective of implementing any recommended reforms by June 2003. New South Wales, Tasmania, the ACT and the Northern Territory are currently undertaking reviews of their liquor licensing legislation. Table 10.3 summarises governments' progress at 30 June 2002 in reviewing and reforming liquor licensing legislation.

New South Wales

The *Liquor Act 1982* contains a needs test which allows people who would be affected by a licence application to object on the grounds that existing facilities meet the needs of the public. The discussion paper issued by the New South Wales review states that it is questionable whether the test succeeds in protecting community interests and achieving the harm minimisation objectives of the legislation. The discussion paper states that 'there are very few examples of persons, other than direct competitors, using these provisions in an attempt to prevent or minimise alcohol-related harm' and that 'the delay to applications associated with needs based objections generally imposes significant legal costs on applicants and objectors' (Department of Gaming and Racing, New South Wales 2002). The discussion paper is to form the basis for submissions and targeted public consultation, before a final report is prepared for consideration by the Government.

Assessment

While New South Wales has not completed its review and implemented appropriate reform by the CoAG deadline of 30 June 2002, the date for completion of the liquor licensing review is imminent. Moreover, the discussion paper prepared for the review clearly recognises that there is a significant question about the contribution of the current needs test to delivering the harm minimisation objectives in the legislation. The discussion paper concludes for example that most benefits of the current needs test arrangements flow to existing operators of liquor businesses, because restriction on the number of licensed premises in a given local area helps to protect the market share held by existing licensees. Other evidence provided to the Council supports this acknowledgment by the discussion paper. One party for example told the Council that in a rural town of more than 3000 inhabitants, the needs test has entrenched a single licensed outlet charging such high prices that many consumers travel to neighbouring towns to purchase packaged liquor.

The needs test is crucial to an investigation by the Australian Competition and Consumer Commission (ACCC) into alleged anticompetitive agreements between new and established operators of retail liquor licences to share sections of the New South Wales marketplace. The ACCC investigation followed complaints that, in some situations, applicants for liquor licences, when faced with significant financial losses from delays while a competitor's objections are waiting to be heard by the Licensing Court, may have agreed to certain restrictions (proposed by that competitor) on their future trading activities. In some cases, aspects of these restrictions may have subsequently been applied as conditions on the applicant's liquor licence by the Court. The investigation alleges that the competitor agreed to withdraw the objection in return for the applicant's agreement to restrict their future trading activities. The ACCC also expressed concern that consumers may have been forced to pay higher prices for packaged liquor in many local areas, including rural and

regional areas, as a result of these alleged agreements and had lesser choice and convenience due to fewer competing liquor outlets.

The Council discussed New South Wales' progress with the Government during the 2002 NCP assessment and is satisfied that New South Wales is on target to complete its review and reform activity by June 2003, the date of the next NCP assessment.

Victoria

Victoria reviewed its liquor licensing arrangements in 1998 and implemented a series of pro-competitive reforms in 1998 and 1999. These reforms included simplifying licensing arrangements and abolishing the public needs criterion. Contrary to the recommendation of the review, however, the then Victorian Government retained the '8 per cent rule' that prevents a licensee from holding more than 8 per cent of the total number of packaged liquor licences.

The public interest evidence provided by Victoria as part of the 1999 NCP assessment gave little support to the argument that the '8 per cent rule' provides a net community benefit, in either managing under-age drinking or shielding current holders of packaged liquor licences from greater competition. The Council concluded that Victoria, to comply with its NCP obligations, would need to remove the 8 per cent limit from its licensing Act.

Following the 1999 NCP assessment, the new Victorian Government established another review, focusing on only the '8 per cent rule' particularly the effectiveness of the rule in promoting the viability of smaller, independent liquor stores. This review released its report in September 2000.

The review concluded that the 8 per cent rule is not an effective way in which to promote the viability of small liquor retailers (Office of Regulation Reform Victoria 2000). It noted that any protection available to independent sellers could be lost at any time if one of the supermarket chains restricted by the rule transfers a licence to a previously unlicensed supermarket, or if chains that are unaffected by the cap expand their liquor retailing. Further, the review found that if the current growth in the number of packaged liquor licences continues, then one of the two major supermarket chains would be able to license all its supermarkets within five years without breaching the rule.

The review noted that removing the 8 per cent limit may 'increase the risk of aggressive price competition between the major chains and could conceivably lead to market domination by several players' (Office of Regulation Reform Victoria 2000, pp. xi – xii). The review recommended not removing the 8 per cent rule until a mechanism is in place to ensure diversity in the marketplace. It provided examples of potential mechanisms, including a cap phase-out linked to an industry adjustment program aimed at improving the competitiveness of small liquor stores.

The Government responded to the review recommendations in January 2001, stating that it would gradually phase out the cap from the end of 2003 or earlier if the industry agreed. On 18 June 2002, the Parliament passed legislation raising the cap to 10 per cent following industry participants' agreement on a package of industry adjustment measures. The cap will increase to 11 per cent from 1 July 2003 and 12 per cent from 1 July 2004. The cap will be removed from the start of 2006.

The industry adjustment measures include the establishment of a $3 million Packaged Liquor Industry Development Trust Fund, to improve the competitiveness of independent liquor stores, and special arrangements (including specified minimum payments) governing the purchase of independent liquor stores by the major chains during the phase-out period.

Assessment

Victoria has commenced the phase out of legislation capping the number of licenses that can be held by an entity. There are benefits to the community (in the form of reduced transitional costs to independent retailers) in phasing reform beyond 30 June 2002. The phased approach is consistent with the CoAG decision that a transitional approach extending beyond 30 June 2002 complies with CPA principles where a public interest case supports the transition.

Queensland

Queensland regulates the liquor retail industry via the *Liquor Act 1992*. The Act has the key objectives of facilitating the development of the liquor industry, given the welfare, needs and interests of the community and the economic implications of change, and regulating the industry so as to minimise harm from alcohol misuse. Queensland reviewed the Act in 1999 (Department of Tourism, Sport and Racing 1999). At the time of the review, the legislation contained several significant restrictions on competition, being:

- a public needs test, whereby the licensing authority explicitly considered the competitive impact on existing sellers when ruling on applications for new licences (s. 116); and

- a requirement that sellers of packaged liquor to the general public hold a general (hotel) licence, with the hotel licence limited to a maximum of three bottle shops which had to be located within a 5 kilometre radius of the main licence, which could not be drive-in facilities and which could not have more than 100 square metres of display area.

Queensland's review recommended that s. 116 be retained — given that removing the requirement for the licensing authority to assess the potential competitive impact of new entrants might lead to a decline in responsible service as liquor sellers sought to maintain profitability. The review made

this recommendation despite its own research citing studies showing that there is no significant association between outlet numbers and the level of consumption and that the pattern of consumption is a more important determinant of alcohol misuse. Consultants to the review also provided little support for s. 116; they recommended removing anticompetitive criteria used to assess applications and giving the licensing authority greater powers to police compliance with the Act.

Queensland's review also recommended retaining the requirement for sellers of packaged liquor to hold a general licence, meaning that they must provide bar facilities at their main premises. It proposed some relaxation of the location and size constraints relating to bottle shops and of the limits on the quantity of liquor that members may purchase from licensed clubs.

Following the review, the Queensland Government amended the Liquor Act via the *Liquor Amendment Act 2001*. The amendments:

- replace the public needs test with a public interest test that focuses on the social, health and community impacts of a licence application rather than the competitive impact on existing licensees;
- relax slightly the size and location constraints applying to packaged liquor outlets: the bottle shop location radius from the main premises was extended from 5 kilometres to 10 kilometres and the maximum permitted floor area for bottle shops was extended from 100 square metres to 150 square metres in line with review recommendations;
- remove quantity limits on club sales of packaged liquor to members and permit diners at licensed restaurants to purchase a single bottle of wine for consumption off the restaurant premises; and
- retain the requirement that sellers of packaged liquor hold a hotel licence (including the limit on a licence holder to a maximum of three packaged liquor outlets) and must provide bar facilities at the site of the hotel licence.

Assessment

Queensland's decision to require its licensing authority to assess the public interest associated with a new licence, rather than the effect of the new entrant on the viability of existing outlets, is consistent with CPA principles. Consistency arises because the assessment of the public interest focuses on demographic information and data on associated social, health, community and regional development impacts, rather than protecting the viability of incumbents. The Council notes the Minister's statement that:

> *The test as to whether a licence or extended trading hours will be granted will not be based on whether the public needs another licence in the locality. Rather, the chief executive will concentrate more on the impact of an additional facility or the impact on the community of a*

> *change in trading hours. In particular, the impact on vulnerable subgroups within the community will receive greater focus.* (Rose 2001)

Queensland's rationale for retaining the hotel licence requirement for packaged liquor sales and the associated restrictions has two elements.

- The potential harms from alcohol misuse support the concept of a 'specialist provider' model limited to general licence holders; and
- Any loss of revenue from packaged liquor sales by country hotels would have adverse effects on their viability and would adversely affect the important social role that the hotels play in rural areas.

Queensland contends that its approach to liquor licensing achieves its objectives without constraining competition. Queensland cited data showing that beer prices in the State are competitive with those in other States and Territories, claiming that Queensland has a diversity of bar facilities, that the number of bottle shops has increased in recent years commensurate with population growth, and that the changes allowing liquor sales by licensed clubs and restaurants have introduced additional competition to the hotel and bottle shop sector. Queensland also considers that the current regulatory structure prevents any participants from gaining significant market power, while ensuring participants are substantial players with sufficient buying power to keep prices competitive.

The Council considers that significant anticompetitive effects arise from Queensland's decisions to retain the requirement that only hotel licence holders can operate bottle shops and the associated restrictions (particularly the regulation of bottle shop location and numbers and the requirement to establish a bar facility at the site of the hotel). The hotel licence requirement prevents entry by nonhotel packaged liquor sellers such as specialist packaged liquor bottle barns and retailers who may wish to sell packaged liquor in conjunction with sales of pre-prepared food for home consumption. Sellers must operate a hotel if they wish to operate a take-away liquor outlet. This restriction has the effect of increasing the demand for hotels relative to the supply, and appears to be creating a market in hotels/licences similar to that which has developed for taxi plates.

The decision to allow sales by licensed clubs and restaurants appears to be a marginal change at best. The wide range of alcohol sold in bottle shops in other States and Territories suggests movements in beer prices alone may not be a sufficient indicator of the competitiveness of the whole market. Data published by the Australian Bureau of Statistics show for example that in March 2002, the price of wine in Brisbane was 7 per cent higher than in Melbourne (ABS 2002). In assessing competitiveness, factors other than price levels are also relevant. Victoria's review found for example that the partial deregulation of its 1987 Act was likely to have resulted in extra nonprice competition directed toward the services associated with liquor rather than liquor itself (State Government of Victoria 1998, p. 35).

The experience of other jurisdictions and evidence from other NCP reviews casts considerable doubt on whether Queensland's licensing arrangements meet the CPA tests. No other Australian jurisdiction requires sellers of packaged liquor to hold a hotel licence. Other jurisdictions seek to ensure the responsible selling of alcohol by specifying the qualifications required of licensees (for example, prescribed standards for character, training and knowledge of obligations in relevant legislation) and the conditions relating to the responsible service of alcohol. There is little evidence that misuse of alcohol is a more significant problem in other States and Territories than in Queensland. Moreover, the evidence from NCP reviews does not support the proposition that nonhotel sellers of packaged liquor are any less responsible than hotel sellers. (Evidence from the Victoria Police to Victoria's review of its liquor licensing legislation acknowledged that nonhotel retailers of packaged liquor are responsible sellers.) Queensland's public interest evidence does not consider the extent to which nonhotel licence holders are responsible sellers of packaged liquor. Further, imposing a State wide requirement that sellers of packaged liquor hold a general licence appears unnecessarily restrictive if the objective is to support rural communities by safeguarding the profitability of rural hotels. While accepting at face value Queensland's contentions that rural hotels make a significant contribution to their local communities and that licensing restrictions are necessary to protect those hotels, the Council considers that this argument does not warrant the same restrictions in urban areas. Indeed, Queensland's recent reform of its retail trading arrangements, which focused on the more populous south-east region, adopted in effect a differentiated approach to reform.

Queensland's review indicates that in 1995-96, the last year for which reliable data are available,[6] Queensland hotels recorded liquor sales (bar and take-away) of approximately $1 billion. It also cites data showing that packaged liquor retailers (as distinct from hotels) account for 46 per cent of liquor sales in New South Wales. This suggests that Queensland's hotel licence requirement each year directs around $500 million of packaged liquor sales to Queensland hotels which may otherwise have gone to nonhotel outlets. While removal of the hotel licence requirement could not be expected to result in nonhotel retailers immediately achieving this share of Queensland's packaged liquor market (in New South Wales, the non-hotel share of liquor sales has gradually increased since deregulation of the packaged liquor market in 1966), the restriction of competition in packaged liquor sales appears to be significant.

The Council does not consider that Queensland's liquor licensing arrangements meet the CPA clause 5 guiding principle. The Council raised its concerns about liquor licensing with the Queensland Government during the 2002 assessment. In response, the Government undertook to revisit this area of regulation, but reiterated its concern that a change in arrangements might

[6] Following legal decisions in 1997 which placed in question the States' right to collect licence fees on liquor and tobacco, States no longer require licensees to provide data on their liquor purchases.

adversely affect the viability of rural hotels and consequently rural communities.

Western Australia

Western Australia's *Liquor Licensing Act 1988* contains two significant competition restrictions.

- A needs test requires licence applicants to satisfy the licensing authority that the licence is 'necessary' to provide for the requirements of the public, having regard to the number and condition of licensed premises existing in the affected area, their distribution, and the extent and quality of the services they offer. Objection to the granting of a licence may be made on the grounds that it is unnecessary to provide for the requirements of the public.

- There is discrimination between hotels and liquor stores: liquor stores are prohibited from trading on Sundays, whereas hotels may open from 10 a.m. to 10 p.m. on Sundays.

Western Australia's review reported in March 2001. The review made the following recommendations in relation to the above restrictions.

- The granting of a licence should depend on the licensing authority being satisfied that the licence is in the public interest. The review stated that the licensing authority, in determining the public interest, may consider (but not be limited to) the likely effect on competition in the retail market or in a particular area where this may be relevant to a matter such as propensity for harm, but should not consider the impact of competition on individual competitors.

- Both hotels and liquor stores should be permitted to trade on Sundays between 10 a.m. and 10 p.m.; that is Sunday trading hours for hotels and liquor stores should be the same.

The Western Australian Government released the review report as a draft for public comment. The Premier has subsequently advised the Council that the Government appreciates the need for reform and will take active steps to progress this during 2002-03. The Premier indicated that the Government would conduct a further review of liquor licensing arrangements during 2002-03.

Assessment

Western Australia's restrictions on liquor licensing constitute a significant competition issue given the size of the market. Annual household expenditure on liquor in Western Australia in excess of $800 million, based on ABS household expenditure data (ABS 2000b).

The recommendations from Western Australia's NCP review provide a useful path to reform. They would ensure a focus on harm minimisation while also enabling consumers to benefit from competition. The measures recommended by the review are in place in several other jurisdictions. The measures would help address the current regulatory discrimination between different types of on-premises and packaged liquor outlets in Western Australia's legislation. The Council considers that licensing tests that focus on public interest factors such as harm minimisation and community amenity (without references to outlet density or competitive effects on incumbents) and are nondiscriminatory in application are unlikely to offend NCP principles.

As discussed above, one of the significant competition questions relating to liquor licensing in Western Australia is the discriminatory treatment of different sellers of take away liquor; in particular, nonhotel liquor stores are prohibited from trading on Sundays whereas hotel bottleshops are not. The questions concerning the prohibition on Sunday trading by liquor stores appear to have some similarities to those relating to the prohibition on retail trading more generally on Sundays, and might usefully be considered by the Ministerial Task Force that Western Australia is to establish to consider retail trading issues.

The Government appears to recognise the need for reform of liquor licensing arrangements and has committed to a further review during 2002-03. In the Council's view, there may also be an opportunity for liquor trading hours matters to be considered by the retail trading Ministerial Task Force. Nonetheless, Western Australia's licensing legislation at the time of this assessment contains significant competition restrictions. Given the findings and recommendations of the State's NCP review report released for public comment, these restrictions do not appear to be in the public interest. Consequently, Western Australia has not met its CPA clause 5 obligations in relation to liquor licensing.

South Australia

South Australia completed its NCP review of liquor licensing in 1996 and removed a number of restrictions in 1997. It retained, however, the proof-of-need test and the requirement that packaged liquor is sold only from premises exclusively devoted to the sale of liquor. The review had recommended retaining these provisions, then a further review after three or four years when evidence of outcomes in less regulated jurisdictions would be available.

Assessment

The Council initially raised the proof-of-need test with the former South Australian Government in the 1999 NCP assessment. It noted that the main effect of the test is to restrict new entry, thus protecting incumbents, rather than to directly address harm minimisation. In almost any other market,

legislation would not facilitate an objection to the establishment of a new business on the basis that need is already satisfied. In line with the review recommendation for a further examination of liquor licensing arrangements in three to four years, the then South Australian Government undertook to reconsider the case for the needs criterion in late 2000 or early 2001. The Council considered that this undertaking satisfied 1999 NCP obligations but the review has not been conducted.

At 30 June 2002, South Australia's liquor licensing legislation contained restrictions on competition that are not supported by robust public interest evidence. The State therefore has not complied with CPA obligations in relation to liquor licensing.

The Council raised this matter with the new South Australian Government, elected in February 2002, in the course of the 2002 NCP assessment. The Government subsequently wrote to the Council to confirm that it intends to review the State's liquor licensing legislation, with the objective of completing the review and appropriate reform activity by June 2003. A team drawn from the Attorney General's Department is to conduct the review against terms of reference that reflect CPA clause 5.

The Council considers that South Australia's commitment to complete the further review and appropriate reform activity by the 2003 NCP assessment is sufficient for the 2002 NCP assessment. The Council will finalise the assessment of South Australia's compliance with the CPA clause 5 in relation to liquor licensing in the 2003 NCP assessment.

Tasmania

Tasmania's legislation contains two significant restrictions on competition:

- the '9 litre rule' that prevents nonhotel sellers of packaged liquor from selling liquor in quantities less than 9 litres in any one sale (except for Tasmanian wine, which may be sold in any quantity); and

- a prohibition on sales of alcohol by supermarkets.

Tasmania's review is under way but had not reported by the CoAG deadline of 30 June 2002. The review group has released an issues paper which identifies the 9 litre rule and the prohibition on supermarket sales of packaged liquor as significant competition restrictions.

Assessment

The '9 litre rule' discriminates between different categories of seller: the effect is to discourage entry by nonhotel liquor outlets. The rule does not appear to have any relationship to the objective of reducing alcohol-related harm. The requirement that customers of nonhotel bottle shops buy at least 9 litres of liquor at each purchase arguably increases the probability of harm.

Tasmania's prohibition on sales of alcohol by supermarkets is likely to significantly reduce competition. Supermarkets are significant participants in the packaged liquor sector in all other jurisdictions.[7]

Restrictions on entry into the Tasmanian packaged liquor market constitute a significant competition issue. In 1998-99, annual household expenditure on packaged liquor in Tasmania is approximately $95 million, based on ABS household expenditure data (ABS 2000b).

The Council raised liquor licensing with the Tasmanian Government during the 2002 NCP assessment. The Government assured the Council that it is committed to resolving the competition questions associated with the State's liquor licensing legislation, consistent with the public interest, as soon as possible. In line with this assurance, the Government has stated that it will consider the recommendations of the final report as a priority, and is likely to introduce amending legislation in autumn 2003 session of Parliament. Given the assurances provided by Tasmania, the Council will finalise the assessment of Tasmania's compliance in 2003.

The ACT

The ACT completed a review of the *Liquor Act 1975* in 2001. The review found that the restrictions in the Act provide a public benefit by protecting consumers from harm caused by the misuse of alcohol. Minor amendments arising from the review were included in the *Legislation Amendment Act 2001*. The Council has previously noted the absence of significant competition restrictions in the ACT legislation and assesses the ACT as having met its CPA clause 5 obligations in this area.

The Northern Territory

The Northern Territory's *Liquor Act* and *Liquor Regulations* contain two significant restrictions.

- The Northern Territory imposes a public needs test that requires the licensing authority, when determining applications for a new licence, to consider whether existing sellers could meet consumer needs.

- The Northern Territory discriminates between hotels and liquor stores: liquor stores are prohibited from trading on Sundays, whereas hotels may open from 10 a.m. to 10 p.m. on Sundays.

[7] In Queensland, supermarkets participate by obtaining hotel licences and operating hotels and associated bottle shops. Jurisdictions generally require supermarkets to separate their liquor sales area from the rest of their business premises and in South Australia, the licensed premises must be in a separate building.

The NCP review of the *Liquor Act* is nearing completion. A draft final review report is being finalised and the Government is expected to consider the report shortly. An issue of particular significance is the restriction of liquor sales in locations where alcohol has created stresses in the community. A licensing test that focuses on public interest factors such as harm minimisation and community amenity (without references to outlet density or competitive effects on incumbents) and is non-discriminatory in application, would be consistent with NCP principles.

Assessment

Given that the Northern Territory has not completed its review, it has yet to comply with its NCP review and reform obligations relating to liquor licensing. The review and reform process is likely to be completed soon, however, so the Council will finalise the assessment of compliance in 2003.

Table 10.3: Review and reform of legislation regulating liquor licensing

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Registered Clubs Act 1976* *Liquor Act 1982*	Public needs test allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence.	Review is underway. Draft report is being prepared.		Council to finalise assessment in 2003.
Victoria	*Liquor Control Act 1987* *Liquor Control Reform Act 1998*	Despite implementing significant pro-competitive reforms, Victoria retains the '8 per cent rule', under which no liquor licensee can own more than 8 per cent of general or packaged liquor licences.	Initial review was completed in 1998. A further review of the '8 per cent rule' reported to the Government in June 2000.	Several pro-competition changes in response to the initial review were implemented through the Liquor Control Reform Act. The Government has commenced a gradual phase-out of the 8 per cent cap in conjunction with a package of measures to assist the competitiveness of independent liquor stores. The cap was raised to 10 per cent on 18 June 2002 and will increase to 11 per cent from 1 July 2003 and 12 per cent from 1 July 2004. The cap will be removed from the start of 2006	Meets CPA obligations (June 2001).

(*continued*)

Table 10.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Liquor Act 1992*	Public needs test (whereby licensing authorities can consider the capacity of existing facilities in determining the public need for a new licence). Only hotel licensees may sell packaged liquor to the public; A limit on the number of bottle shops that any one hotel can establish. Restrictions on the size and configuration of bottle shops.	Review was completed in 1999 and endorsed by Cabinet in February 2000. Review recommended retaining key restrictions and removing some other restrictions.	*Liquor Amendment Act 2001* replaces the public needs test with a public interest test which will examine social, health, community and regional development impacts of licensing proposals. Although the licensing authority must still collect data on liquor outlets in the relevant locality, the Government stated that it did not intend to use the new public interest test to restrict competition. The Act also retains the hotel monopoly on the sale of packaged liquor to the public and restrictions on the ownership, location and configuration of bottle shops. The Council does not consider that there is a net public benefit from these restrictions.	Council to finalise assessment in 2003.

(*continued*)

Table 10.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Liquor Licensing Act 1988* and Regulations	Public needs test allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence. Liquor stores, unlike hotels, are prohibited from trading on Sunday.	Review reported in March 2001 and recommended: • that the granting of a licence depend on the licensing authority being satisfied that the licence is in the public interest which should not involve consideration of the competitive impact of a new licence on existing competitors. • identical Sunday trading hours for hotels and liquor stores. Western Australia released the review report as a draft for public comment. Western Australia to conduct a further review during 2002-03.	No reform to date.	Does not comply with CPA obligations.

(*continued*)

Table 10.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Liquor Licensing Act 1997* (which retained certain restrictions from the earlier *Liquor Licensing Act 1985*)	Review recommendations accepted by Government include: • the proof-of-need test requiring licence applicants to demonstrate that a consumer need exists for the grant of a licence; and • the requirement that only hotels and retail liquor stores devoted to the sale of liquor exclusively may sell liquor.	Review was completed 1996 and changes were implemented in 1997. Government has undertaken to review the proof-of-need test in 2002.		Council to finalise assessment in 2003.
Tasmania	*Liquor and Accommodation Act 1990*	The '9 litre rule' prevents non-hotel sellers of packaged liquor from selling liquor (except for Tasmanian wine) in quantities less than 9 litres in any one sale. Supermarkets cannot hold a liquor licence.	Review commenced in March 2001.		Council to finalise assessment in 2003.
ACT	*Liquor Act 1975* (except ss 41E[2] and 42E[4])	Licensing of sellers.	Review was completed in 2001. The restrictions contained in the Act were found to be in the public interest.	Minor amendments were made to the Act	Meets CPA obligations (June 2002).
Northern Territory	*Liquor Act*	Public needs test allows licensing authorities to consider the capacity of existing facilities in determining the public need for a new licence.	A draft final review report has been prepared. The Government advised that it expected to consider the report before 30 June 2002.		Council to finalise assessment in 2003.

Petrol retailing

Review and reform activity

Western Australia and South Australia have legislation that restricts competition in petrol retailing. Western Australia's Ministry of Fair Trading reviewed legislation in that State and South Australia reviewed its legislation. The ACT has reviewed legislation that allows the Minister to regulate retail fuel prices. The legislation has not been used. Table 10.4 summarises jurisdictions' progress in reviewing and reforming legislation that regulates petrol retailing.

Western Australia

Western Australia's *Petroleum Products Pricing Amendment Act 2000* is intended to limit petrol and diesel retail price fluctuations. The Act provides for:

- retail prices to be fixed for at least 24-hours; and
- a minimum wholesale price to be established for motor fuels.

Western Australia has advised that a final report of the legislation review of the Petroleum Products Pricing Amendment Act and the *Petroleum Legislation Amendment Act 2001* has been completed and endorsed by Cabinet. Western Australia has advised that the review report found that regulation of the petroleum industry is in the public interest because it protects consumers, encourages stability in pricing and provides for transparency in pricing. (The review report is not a public document.)

The Australian Competition and Consumer Commission (ACCC) considered Western Australia's petrol pricing arrangements in its report on fuel price variability (ACCC 2001a). The ACCC found that industry participants (including oil majors, independents, industry organisations, consumer organisations and governments other than the Government of Western Australia) do not support the arrangements in Western Australia. It also found that the State's legislation had no consistent impact on prices. The ACCC has advised the Council that its subsequent monitoring of Perth's fuel prices suggests they are generally higher than those of Sydney and Melbourne. Given that the ACCC's price monitoring indicates that the legislation may be failing to achieve its objective, the Council considers that there is a case for Western Australia to consider the repeal of this legislation. The Council will make a final assessment in 2003.

South Australia

South Australia's *Petrol Products Regulation Act 1995* allows the relevant Minister to withhold new retail petroleum licences if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. South Australia completed a review of the Petrol Products Regulation Act in 2001 which the Government is yet to be consider.

The restriction in South Australia's legislation is unusual in that it limits entry on the basis of its impact on the competitive position of incumbents. The *Trade Practices Act 1974* allows for the consideration of possible unfair competition. Because South Australia has not yet removed these restrictions, or provided a public interest argument to support them, it is yet to comply with its CPA clause 5 obligations relating to this Act. The Council will make a final assessment in 2003.

The ACT

The ACT has completed NCP reviews of the *Fair Trading (Fuel Prices) Act 1993* and the *Fair Trading (Petroleum Retail Marketing) Act 1995*. The ACT has retained former Act in accordance with review recommendations. The review found that the Act has no effect unless the Minister regulates prices, but that the costs of exercising this power would be significant. The Act has never been used. The review concluded that the Minister would be unlikely to regulate prices unless the entire market is acting in a collusive or anticompetitive manner and that regulation, in such circumstances, would provide a countervailing community benefit. The review also found that there is no viable or realistic alternative to the restriction. The *Fair Trading (Petroleum Retail Marketing) Act 1995* has been repealed in line with review recommendations.

The ACT's actions are consistent with CPA clause 5 obligations although, given that the *Trade Practices Act 1974* deals with collusive and anticompetitive behaviour, there is a case for the ACT to consider repealing this legislation.

Table 10.4: Review and reform of legislation regulating petrol retailing

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Petroleum Products Pricing Amendment Act 2000*	Allows Government regulation of fuel prices.	Review by Ministry of Fair Trading was completed in 2001. Restrictions were found to be in the public interest. An ACCC inquiry found, however, that the restrictions have no consistent effect on price and are not supported by industry participants, consumer groups and other governments.		Council to finalise assessment in 2003.
	Petroleum Legislation Amendment Bill 2001	As above.	As above.		Council to finalise assessment in 2003.
South Australia	*Petrol Products Regulation Act 1995*	Allows the Minister to withhold new retail petroleum licences if they provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet.	Review was completed mid-2001 but report is yet to be considered by the Government.		Council to finalise assessment in 2003.
ACT	*Fair Trading (Fuel Prices) Act 1993*	Allows the Government to impose price controls on fuels in certain circumstances.	Intradepartmental review recommended retention of restrictions on public interest grounds. Review argued that provisions would be exercised only at times of widespread anticompetitive behaviour.	Restrictive provisions were retained.	Meets CPA obligations (June 2001).

(*continued*)

Table 10.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Fair Trading (Petroleum Retail Marketing) Act 1995*		Review was completed.	Act was repealed.	Meets CPA obligations (June 2001).