12 Social regulation: education, child care and gambling

There are frequently economic aspects to governments' management of social policies and the provision of related services. While decisions about appropriate policy objectives are matters for elected governments, in consultation with their constituents, legislation to achieve those objectives often restricts who can offer particular services, imposes pricing obligations or sets other conditions that affect the competitive environment. The way in which governments seek to achieve particular social objectives therefore falls within the scope of the National Competition Policy (NCP).

Legislation review and reform obligations are relevant for the education, child care and gambling sectors. All governments identified legislation in these areas for review under the NCP. Competitive neutrality issues may also arise, given the involvement of government business activities in service delivery. Competitive neutrality objectives are relevant in the education sector, where State Government business activities are important service providers, and in the child care sector, where local governments are important service providers.

Education

All States and Territories have legislation governing the education sector that restricts competition.

Education legislation may be categorised as:

- general education Acts that relate to the provision of public and private schooling at primary and secondary levels including in relation to the education of overseas students in Australia;
- Acts that establish a system of vocational education and training; and
- Acts that establish the universities of each jurisdiction.

Several jurisdictions have also legislated to regulate the provision of education to overseas students and to regulate specific issues such as the establishment of particular schools. Queensland, South Australia and Tasmania require the registration of teachers in both government and

nongovernment schools and Victoria requires the licensing and registration of teachers in private schools.

Competitive neutrality is also relevant to the education sector with competitive neutrality principles applying to the business activities of government-owned education providers where they compete to earn revenue and profits with private sector providers. As public educational institutions increasingly seek to supplement government funding through commercial activity, issues of competitive neutrality are assuming increased significance.

Restrictions on competition

Education legislation predominantly restricts competition via requirements for the registration of nongovernment education/training providers and the accreditation of their courses.[1] Nongovernment providers must meet requirements that specify the nature and content of the instruction offered, ensure students receive education of a satisfactory standard and provide protection for the safety, health and welfare of students. Nongovernment providers may also be required to demonstrate their financial viability.

Regulating in the public interest

The principal argument for competition restrictions in education is that they ensure education providers meet minimum standards. The achievement of prescribed education standards enables the community in general and employers in particular to attach more easily a consistent meaning to various education awards. Consumers of education are also provided with some degree of certainty about the nature of courses. The increasing importance of international student enrolments in Australian educational institutions provides a further argument for maintaining high quality standards.

The requirement that education providers demonstrate a measure of financial viability may be justified as a way of avoiding the significant disruption and potential monetary losses to students that would follow from the forced closure of an educational provider. The need for adequate health, safety, and welfare safeguards for students is self-evident, but measures to achieve these outcomes – registration, accreditation and financial viability – create a barrier to entry which may reduce the range of available courses and subjects and reduce the pressure on existing providers to offer high quality courses. In particular, a reduction in potential competition may reduce the incentive to existing providers to develop innovative courses and modes of delivery.

[1] In relation to higher education, accreditation has been defined as a process of assessment and review that enables a higher education course or institution to be recognised or certified as meeting appropriate standards (Department of Education, Training and Youth Affairs 2000, p. 4).

Review reports have stressed the need to maintain educational standards. Ideally, regulation that is in the public interest should not restrict providers that clearly meet required educational, student welfare and financial standards from offering education services. Tables 12.1–12.3 summarise State and Territory governments' progress in reviewing and reforming legislation regulating general education, vocational education and training, and universities.

General education provisions

Review and reform activity

Victoria, South Australia and Tasmania have completed their review and reform of general education legislation that establishes the government school system, accredits nongovernment schools and accredits the providers of education to fee-paying overseas students. In the 2001 NCP assessment, the Council assessed these jurisdictions as having met their Competition Principles Agreement (CPA) clause 5 obligations in this area. The Council also assessed Queensland's review and reform of the *Education Capital Assistance Act 1993* and the *Education (Overseas Students) Act 1996* as having met CPA clause 5 obligations.

New South Wales

New South Wales did not include education legislation in its legislation review program. The *Education Act 1990* establishes conditions for the registration of nongovernment schools and accreditation procedures these schools must follow when presenting candidates for education certificates.

In the 2001 NCP assessment, the Council asked New South Wales to either explain why it is not reviewing apparently restrictive legislation or add the legislation to its review program. New South Wales has advised the Council that it does not intend to review its education legislation under the NCP program at this time because other review processes are underway or have been completed. In support of its position, New South Wales cites the 1995 review of the State's curriculum, assessment and reporting arrangements (the Eltis Review) and a review focusing on reforms to the Higher School Certificate conducted in the same year (the McGaw Review). The Government is currently reviewing the funding, regulation and accountability arrangements for nongovernment schooling and the review may recommend changes to the Education Act. In addition, New South Wales is leading a national process on the funding and accountability of government and nongovernment schools across Australia through the Schools Resourcing Taskforce of the Ministerial Council on Education, Employment, Training and Youth Affairs. A major part of this work will be to achieve national legislative consistency across all jurisdictions.

Given this review activity and that reviews in other jurisdictions have found similar restrictions to those of New South Wales to be in the public interest, the Council assesses New South Wales as having met its CPA clause 5 obligations in this area.

Queensland

The review of the *Education (General Provisions) Act 1989* was expected to be completed by the end of March 2002, with any reforms then to be soon implemented. The review is addressing the registration of overseas curriculum and the ability to prohibit the sale of certain items from government school tuckshops. The review of the *Grammar Schools Act 1974* is also nearing completion. The Council will make a final assessment in June 2003.

Western Australia

Western Australia is reviewing the *Education Service Providers (Full Fee Overseas Students) Registration Act 1992* under the NCP. Western Australia has advised that its review is near completion although it has yet to provide any details of the review outcome. The Council will make a final assessment in 2003 when it will look for Western Australia to provide full information on its review process and outcome and reform response.

The ACT

The Statute Law Amendment Bill 2001 repealed the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994*. The ACT thereby meets its CPA obligations for this legislation. The ACT has also completed reviews of the *Education Act 1937*, the *Free Education Act 1906* (NSW), the *Public Instruction Act 1880* (NSW), and the *Schools Authority Act 1976*. The review involved extensive consultation and made 23 recommendations, including:

- establishing a single Act for schooling in the ACT;
- giving consideration to teacher registration for professional enhancement of teachers in the ACT;
- retaining current legislative provisions for the establishment and re-registration of nongovernment schools; and
- reviewing the licensing arrangements for independent preschools that are attached to registered nongovernment schools.

The review recommendations were to be given effect in the Education Bill 2000, but the Bill did not come before the Legislative Assembly for the second reading before the ACT election in October 2001. The Bill is being updated to

incorporate the new Government's views. It was to be issued as an exposure draft in June 2002 and the new legislation is unlikely to be completed until the end of 2002. The Council will make a final assessment in June 2003.

The review also considered the applicability of the *Board of Senior Secondary Studies Act 1997*. The legislation was found to maintain uniform standards for senior secondary courses and certification, so has been retained. The Council assesses the ACT as having met its CPA clause 5 obligations in relation to this Act.

The Northern Territory

The Northern Territory did not include education legislation in its legislation review program. The Education Department, however, conducted a preliminary review of the *Education Act*, finding that the Act's restrictions on competition are demonstrably for the community benefit. Arising from the review, the Northern Territory foreshadowed passing regulations to clarify the requirements for registration of nongovernment schools and universities, and for the accreditation of university courses.

The course of action being adopted by the Northern Territory is consistent with the Territory's obligations under CPA clause 5. The Council will make a final assessment of the Northern Territory's review activity and reform implementation in 2003.

Table 12.1 summarises the progress of governments' review and reform of legislation that regulates general education.

Vocational education and training

In July 1992 the States and Territories agreed to implement a national vocational education and training strategy through their own legislation. The agreement required legislative amendment in a number of jurisdictions to establish nationally consistent arrangements. Legislation in all States and Territories restricts competition by requiring the registration of training providers and the accreditation of training courses and by specifying arrangements for training agreements and vocational placements.

Review and reform activity

In the 2001 NCP assessment, the Council assessed Victoria, Queensland, Western Australia, South Australia and the ACT as having met their CPA clause 5 obligations. These jurisdictions have completed their review and reform activity, finding that legislative restrictions in this area provide a net public benefit, and thus retaining the legislation without change.

New South Wales

New South Wales did not include education legislation in its legislation review program. The *Vocational Education and Training Act 1990* establishes conditions for the registration of training providers and accreditation of training courses.

In the 2001 NCP assessment, the Council asked New South Wales to either explain why it is not reviewing apparently restrictive legislation, or add the legislation to its review program. New South Wales advised the Council that the Act has been recently amended following a review that involved extensive consultations with external stakeholders, including private providers and the university sector. Given this review activity and that reviews in other jurisdictions have found similar restrictions to be in the public interest, the Council assesses New South Wales as having met its CPA clause 5 obligations in this area.

Tasmania

The *Vocational Education and Training Act 1994* restricts competition by establishing conditions for the registration of training providers and accreditation of training courses. Tasmania completed a review of the Act in 2001 that published an issues paper and a regulatory impact statement, and involved extensive public consultation. The Tasmanian Government is considering its response to the review. The Council will make a final assessment in June 2003.

The Northern Territory

The Northern Territory did not include the *Northern Territory Employment and Training Act* in its legislation review program. In the 2001 NCP assessment, the Council asked the Northern Territory to either explain why it is not reviewing apparently restrictive legislation or add the legislation to its review program. The Northern Territory advised the Council that although its legislation does require registration private providers and accreditation of their courses, the legislation is consistent with that of other jurisdictions in which reviews have found that restrictions provide a net public benefit. While it is preferable that Governments conduct their own reviews to ensure appropriate consideration of local factors, the Council acknowledges that the NCP provides scope for Governments to develop regulatory arrangements on the basis of the relevant experience of other jurisdictions. Such an approach, assuming it originates from objective analysis, will at least enhance the prospects for national consistency in jurisdictions' regulation. The Council therefore assesses the Northern Territory as having met its CPA clause 5 obligations in this area.

Table 12.2 summarises the progress of governments' review and reform of legislation that regulates vocational education and training.

Universities

Review and reform activity

Universities are generally established by a separate Act that provides for their governance. A further category of legislation provides for the accreditation of new universities or other tertiary education providers wishing to operate within the jurisdiction. In addition, Western Australia reviewed the University Colleges Act. 1926 and the ACT reviewed the Canberra Institute of Technology Act 1987. Both these Acts were retained without reform on the recommendation of their respective reviews.

Legislation that establishes universities

In the 2001 NCP assessment, the Council assessed the ACT as having met its CPA clause 5 obligations in this area. New South Wales, Victoria, South Australia, Tasmania and the Northern Territory did not include this legislation in their NCP legislation review programs. The legislation of these jurisdictions does not contain significant restrictions on competition and thus does not require review under the NCP.

Queensland

The review of legislation governing public universities in Queensland included considered the following legislation:

- *University of Southern Queensland Act 1998*;
- *University of Queensland Act 1998*;
- *James Cook University Act 1997*;
- *Queensland University of Technology Act 1998*;
- *Griffith University Act 1998*;
- *Central Queensland University Act 1998*; and
- *University of the Sunshine Coast Act 1998*.

The review identified in each Act a potential restriction on the ability of each university to apply revenue, in that revenue must be applied solely for university purposes. The review found that this restriction does not have a significant adverse impact on competition in the market and is not onerous. Accordingly, the existing legislation has been retained in the public interest. The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

Western Australia

Western Australia completed legislation reviews of its universities' enabling Acts in 1999. The reviews concluded that most restrictions are minor and in the public interest, while recommending that the investment powers of Edith Cowan University be aligned with those of other universities. The State's Repeal and Amendment (Competition Policy) Bill is progressing the necessary amendments to the *Edith Cowan University Act 1984*. The Council will make a final assessment in 2003.

Registration of universities and accreditation of university courses

The Ministerial Council on Education, Employment, Training and Youth Affairs endorsed the National Protocols for Higher Education Approval Processes on 31 March 2000. (Department of Education Training and Youth Affairs 2000). The protocols have been designed to ensure consistent criteria and standards across Australia in matters such as the recognition of new universities, the operation of overseas higher education institutions in Australia and the accreditation of higher education courses to be offered by providers that are not self accrediting. It is desirable that legislation relevant to these aspects of higher education complies with the protocols developed by the Ministerial council and meets the CPA test.

In the 2001 NCP assessment, the Council assessed South Australia, Tasmania and the ACT as having met their CPA clause 5 obligations in this area. These jurisdictions had reviewed legislation requiring registration of universities and accreditation of university courses and retained restrictions in the public interest.[2] Western Australia does not have this type of legislation.

New South Wales

New South Wales did not include the *Higher Education Act 1988* in its NCP legislation review program. The Act establishes procedures for the approval of courses as advanced education courses. In the 2001 NCP assessment, the Council asked New South Wales to either explain why it is not reviewing apparently restrictive legislation, or add the legislation to its review program. New South Wales has advised the Council that the Act has been recently amended following a review that involved extensive consultations with external stakeholders, including private providers and the university sector. Given this review activity and that reviews in other jurisdictions have found similar restrictions to be in the public interest, the Council assesses New South Wales as having met its CPA clause 5 obligations in this area.

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[2] The relevant South Australian and ACT provisions are contained in their respective vocational education Acts. The previous section of this chapter discusses the review and reform of this legislation.

Victoria

Victoria completed a review of the *Tertiary Education Act 1993* in 1997. The Department of Education oversaw the review having engaged Victoria's Office of Regulation Review to ensure the independent conduct of the review. The review recommendations were that:

- Ministerial guidelines should be developed to make the process of approval of private universities to conduct courses leading to higher education awards more transparent;
- that the requirement for applicants seeking approval to demonstrate 'the need in Victoria for the course of study' be removed, as it has the potential to be used in an anti-competitive manner by preventing the entry of an institution that wants to compete directly with universities by offering similar courses;
- the current system restricting the delivery of higher education awards to recognised universities should be retained because the benefits outweigh the costs
- universities should be endorsed as providers of higher education courses for overseas students in place of endorsement of higher education courses

The Government accepted the review recommendations and Parliament passed the reforms to legislation in 1997. In 2001 the Victorian Parliament enacted the *Post Compulsory Education Acts (Amendment) Act 2001* for the principal purpose of amending the *Tertiary Education* Act 1993 so that it provided for the full implementation of the Ministerial Council protocols. The Council assesses Victoria as having met its CPA clause 5 obligations in this area.

Queensland

The *Higher Education (General Provisions) Act 1989* imposes restrictions and accreditation procedures on nonuniversity providers and foreign universities that seek to provide higher education courses leading to higher education awards in Queensland. A review of the Act was completed in 2001. The review identified sections of the legislation which are restrictive because they:

- impose a limitation on the operation of foreign universities in Queensland;
- impose a limitation on the use of the title 'university'
- impose a limitation on the conferring and use of higher education awards;
- provide for the Minister to accredit courses offered (or proposed to be offered) by nonuniversity providers; and
- provide for the examination of the operations or recognition of universities.

The review recognised the value of accreditation provisions being nationally uniform. The review found that accreditation contributed to overcoming information asymmetry – that in the absence of accreditation, potential students would have difficulty in assessing the merits of particular providers. The review also recognised the social benefits generated by education. The Government retained the Act in its current form in accordance with the review recommendations.

The Council assesses Queensland as having met its CPA clause 5 obligations in this area.

The Northern Territory

The Northern Territory did not include its *Education Act* which regulates higher education, on its original NCP legislation review program. The Northern Territory has advised the Council, however, that it intends to review and, if necessary, amend the relevant section of the *Education Act* in 2002 to ensure it reflects the protocols endorsed by the Ministerial Council on Education, Employment, Training and Youth Affairs. The Council will make a final assessment in 2003.

Table 12.3 summarises the progress of governments in review and reform of legislation that regulates universities.

Teachers

When the NCP legislation review program commenced (1996), both Queensland and South Australia required all teachers in government and non-government schools to be registered. Victorian legislation required nongovernment teachers to be registered. It also required teachers with interstate qualifications taking up a job in government schools to have their qualifications assessed and to undergo a 'good character' check. In 2000 Tasmania passed legislation requiring all government and nongovernment teachers to be registered (to commence during 2001). These Governments have all reviewed legislation requiring the registration of teachers under the NCP program. Each review found that registration was in the public interest. Governments argue that regulation of teachers is generally beneficial in that it ensures teachers have minimum qualifications and a minimum level of competence, and prevents persons who are not of good character being employed by schools. Tasmania also argues that registration is important in raising the status of the teaching profession. In the 2001 NCP assessment, which considers this area in more detail, the Council assessed Victoria, Queensland, South Australia and Tasmania as having met their CPA clause 5 obligations in this area.

Competitive neutrality

In 2001 Queensland endorsed the application of competitive neutrality principles to TAFE Queensland institutes where they compete directly with private providers on price, and the implementation of a full cost pricing model for competitive purchasing and fee-for-service programs by February 2002. All jurisdictions, except Western Australia, now apply competitive neutrality principles to the business activities of their TAFE institutions. Western Australia has deferred matters relating to local council rates, State taxes and land tenure arising from the review of its universities' legislation to competitive neutrality reviews of the universities, which are now almost complete. An interagency working group has been established in order to finalise the implementation of the competitive neutrality review of universities.

In 1999, the Council of Australian Governments (CoAG) Committee on Regulatory Reform examined whether a cross-jurisdictional approach would be appropriate for applying competitive neutrality to the higher education sector. The committee considered, given that the majority of university business activities are local and regional in their operation and impact on private sector businesses, that few issues would have a cross-jurisdictional impact and that these could be dealt with on a case basis. In 2000 the committee referred the matter of competitive neutrality to the Australian Vice Chancellors' Committee which advised that universities have continued to work individually to ensure they comply with competitive neutrality principles. This compliance effort has involved drawing on available material such as State-based guidelines.

For businesses not subject to Executive control (which include university businesses), CoAG has stated that assessment of a government's compliance with competitive neutrality requirements should look for a 'best endeavours' approach. Under this approach, the relevant government must at least provide a transparent statement of competitive neutrality obligations to the business entity concerned. Jurisdictions' NCP annual reporting indicates that they are complying with the CoAG suggested approach.

Competitive neutrality complaints concerning the business activities of education institutions have been made in two jurisdictions. In the period 1996–99, Victoria investigated seven complaints concerning the commercial activities of TAFE institutions and universities, upholding two. In 1999, South Australia upheld one of two complaints concerning the nonapplication of competitive neutrality to courses conducted by the Department of Education, Training and Employment. Where these jurisdictions did not uphold a complaint, it was because either the business that was the subject of the complaint was not required to apply competitive neutrality principles, or that competitive neutrality principles had been correctly applied.

Table 12.1: Review and reform of legislation regulating general education

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Education Act 1990*	Sets conditions for the registration of nongovernment schools. Prescribes accreditation procedures for registered nongovernment schools wishing to present candidates for education certificates.	Act was not included on legislation review schedule. New South Wales has advised the Council that the legislation was the subject of two reviews in 1995 and that a review of the funding, regulation and accountability arrangements for non-government schooling is under way.		Meets CPA obligations (June 2002).
Victoria	*Education Act 1958*	Provides for the registration of non-government schools and endorsement of schools as suitable for overseas students.	Review was completed in May 2000 and recommended less restrictive criteria for the registration of nongovernment schools and a differential fee structure for overseas students attending government schools.	The Government rejected some of the review recommendations, but provided a public benefit case to support its position.	Meets CPA obligations (June 2001).
Queensland	*Education Capital Assistance Act 1993*	Limits the provision of certain funding assistance to schools affiliated with two nominated capital assistance authorities. Also includes limitations on the type of financial institutions that can receive deposits/investment of capital assistance funds.	A formal review was not undertaken.	The restriction related to affiliation was resolved through an amendment to legislation that requires schools to be listed (but not affiliated) with a group. The issue related to financial institutions was subjected to further analysis and determined not to be restrictive.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Education (General Provisions) Act 1989* and Regulations		This review is focusing on the issues of the registration of overseas curriculum and the ability to prohibit the sale of certain items from State school tuckshops. Review of proposed new legislation relating to the establishment, registration and accountability of nongovernment schools will be completed as a separate exercise. The final public benefit test report is being developed.		Council to finalise assessment in 2003.
	Education (Overseas Students) Act 1996	Requires registration of providers of education to overseas students.	Review was completed in January 2000. NCP justification was provided for 1999 amendments.	Existing regulatory regime was retained in the public interest, as decided at June 2000.	Meets CPA obligations (June 2001).
	Grammar Schools Act 1975	Regulates the establishment of new public grammar schools.	Review has been re-opened (the original report was completed in September 1997) and is being done in accordance with revised public benefit test guidelines. The review is close to completion.		Council to finalise assessment in 2003.
Western Australia	*Education Service Providers (Full Fee Overseas Students) Registration Act 1992*	Requires registration of providers of education to overseas students.	Review is under way.		Council to finalise assessment in 2003.

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Education Act 1972* and Regulations	Identifies barriers to market entry and restricts market conduct in for teachers and nongovernment schools.	Review was completed in July 2000. It found that restrictions on competition were justified in the public benefit.	Act was retained without reform.	Meets CPA obligations (June 2001).
Tasmania	*Christ College Act 1926*	This Act was originally thought to provide a possible advantage not given to other schools. The Education Department now considers that this is not the case and will provide reasons for its position.			Council to finalise assessment in 2003.
	Education Act 1994	Requires nongovernment schools to be registered.	Review completed in December 2000. The review found that restrictions on competition were justified in the public benefit.	Act was retained without reform.	Meets CPA obligations (June 2001).
	Education Providers Registration (Overseas Students) Act 1991	Requires registration of providers of education to overseas students.	As above.	As above	As above.
	Hutchins School Act 1911	Provides a possible advantage not given to other schools.		Act was repealed in 2001.	Meets CPA obligations (June 2002).
ACT	*Board of Senior Secondary Studies Act 1997*	Establishes accreditation procedures for courses.	Intradepartmental review was completed in 1999. The review found that the legislation maintained uniform standards for senior secondary courses and certification.	Act was retained without reform.	Meets CPA obligations (June 2002).

(*continued*)

Table 12.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Education Act 1937* *Schools Authority Act 1976* *Public Instruction Act 1880* *Free Education Act 1906*	Requires registration of schools.	Review completed.	The Government is proceeding with new school education legislation accounting for the findings and recommendations of the review.	Council to finalise assessment in 2003.
	Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994	Requires registration of providers of education to overseas students.		Act was repealed.	Meets CPA obligations (June 2002).
Northern Territory	*Education Act*	Requires registration of nongovernment schools and a framework for the operation of higher education institutions.	Departmental review found restrictions were in the public interest.	Additional regulations were foreshadowed to clarify the requirements for registration of private schools and accreditation of higher education providers.	Council to finalise assessment in 2003.

Table 12.2: Review and reform of legislation regulating vocational education and training

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Vocational Education and Training Accreditation Act 1990*	Requires registration of training providers and accreditation of training courses.	Act was not included in legislation review schedule. New South Wales has advised the Council that the Act has been recently amended following a review that involved extensive consultations with external stakeholders, including private providers and the university sector.		Meets CPA obligations (June 2002).
Victoria	*Vocational Education and Training Act 1990*	As above.	Review was completed in 1998.	Act retains restrictions relating to accreditation, registration of private providers and Ministerial setting of fees as being in the public interest.	Meets CPA obligations (June 2001).
Queensland	*Vocational Education, Training and Employment Act 1991*	As above.	Minor review was carried out in 1997 on the then proposed new Bills (a Vocational Education and Training Bill and an Institute Bill) to replace this Act. A further minor review was undertaken of proposed Training and Employment Bill that replaced the above two Bills. This Bill was considered to impose fewer restrictions on providers than imposed by the 1991 Act that it replaces. It also delivered greater flexibility for employers, registered training bodies and trainees.	Training and Employment Bill (which implemented a national scheme of training and is less restrictive than the previous Act) was assented to in June 2000.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.2 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Vocational Education and Training Act 1996*	As above.	Review was completed in 1999, concluding that the restrictions on competition are minimal and that public benefits arising from the restrictions outweigh the costs.	Act was retained without reform.	Meets CPA obligations (June 2001).
South Australia	*Vocational Education, Employment and Training Act 1994*	Requires registration of training providers and accreditation of training courses, including courses leading to the conferring of a degree.	Review was completed in April 2000, concluding that public benefits of restrictions outweigh costs.	Act was retained without reform	Meets CPA obligations (June 2001).
Tasmania	*Vocational Education and Training Act 1994*	Requires registration of training providers and accreditation of training courses.	Review completed in 2000. The Government is considering the review's recommendations.		Council to finalise assessment in 2003.
ACT	*Vocational Education and Training Act 1995*	As above.	Intradepartmental review concluded that public benefit of restrictions outweighs costs.	Act was retained without reform. Amendments were proposed to meet national requirements for mutual recognition of training providers.	Meets CPA obligations (June 2001).
Northern Territory	*Northern Territory Employment and Training Authority Act*	As above.	Act was not included in legislation review schedule. The Northern Territory has advised the Council that its legislation is consistent with that of other jurisdictions in which reviews have found that restrictions provide a net public benefit.		Meets CPA obligations (June 2002).

Table 12.3: Review and reform of legislation regulating universities

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Higher Education Act 1988*	Provides for the approval of courses of study as advanced education courses.	Act was not included in NCP legislation review program. New South Wales has advised the Council that the Act has been recently amended following a review that involved extensive consultations with external stakeholders.		Meets CPA obligations (June 2002).
Victoria	*Tertiary Education Act 1993*	Requires courses to be accredited.	Review was completed in 1998. Accreditation procedures were found to be in the public interest. The review recommended removal of the requirement that applicants, seeking approval to conduct courses leading to higher education awards, should demonstrate the need in Victoria for the course of study	The Government accepted the review recommendations and Parliament passed the reforms to legislation in 1997. In 2001 Victoria enacted the *Post Compulsory Education Acts (Amendment) Act 2001* for the principal purpose of amending the Tertiary Education Act so that it provided for the full implementation of the Protocols.	Meets CPA obligations (June 2002).

(*continued*)

Table 12.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	Various Acts establishing universities in Queensland.	Potentially restricts the ability of each university to apply revenue, in that revenue must be applied solely for university purposes.	Review was completed in 2001 and found that the restriction did not have a significant impact on competition.	Act was retained without reform.	Meets CPA obligations (June 2002).
	Higher Education (General Provisions) Act 1989	Establishes accreditation and monitoring procedures for higher education providers that wish to establish in Queensland.	Review completed in 2001. The review recognised the value of accreditation provisions being nationally uniform. It found that the restrictions were justified on a number of public benefit grounds.	The Treasurer endorsed the review recommendations in August 2001. Existing regulatory regime was retained in the public interest	Meets CPA obligations (June 2002).
Western Australia	*Curtin University of Technology Act 1966* *Edith Cowan University Act 1984* *Murdoch University Act 1973* *University of Notre Dame Australia Act 1989* *University of Western Australia Act 1911*	Governs the investment of university funds (with variation between universities).	Review was completed in 1998, concluding that most restrictions were minor and in the public interest and that investment provisions for Edith Cowan should be aligned with other universities.	Review recommendations have been endorsed by the Government. The amendments to the Edith Cowan University Act are being progressed through the State's Repeal and Amendment (Competition Policy) Bill.	Council to finalise assessment in 2003.
	University Colleges Act 1926	Restrict access to university lands, controls the use of land and provides for the transfer vested land to freehold land.	Review was completed in 1998. Restrictions were assessed as being in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*University of Adelaide Act 1971* *Flinders University of South Australia Act 1966* *University of South Australia Act 1990*	Acts were assessed as not restricting competition.	Review was not required.	Acts were retained without reform.	Meets CPA obligations (June 2002).
Tasmania	*Universities Registration Act 1995*	Requires institutions wanting to operate as universities to be registered and enables conditions to be imposed on their conduct.	Minor review was completed. Restrictions relating to the registration and accreditation of private universities were retained in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2002).
ACT	*Canberra Institute of Technology Act 1987*	Provides an exemption from ACT taxes and charges. Cabinet decided that the ACT Revenue Office would review the institute's taxation liability in the second half of 1998.	Review was completed in 1999. Act was assessed as not restricting competition.	Act was retained without reform.	Meets CPA obligations (June 2001).
	University of Canberra Act 1989	Act assessed as not restricting competition.	Review was not required.	Act was retained without reform.	Meets CPA obligations (June 2001).

Child care

Child care generally refers to arrangements for the care of children (usually under 12 years of age) by people other than their parents. It can be formal child care — such as preschool, a child care centre, family day care and before and after school care — or informal care, which is care that is nonregulated and includes care by family members, friends and paid babysitters. According to the Australian Bureau of Statistics, 51 per cent of children under 12 years of age used some kind of child care in 1999 (ABS 2000a).

Legislation to regulate child care services exists in all jurisdictions. Regulation usually requires the operator of a child care business to hold a licence. Other requirements relate to matters such as health and safety considerations and the meeting of staff/child ratios. NCP issues arise in the regulation of formal child care, usually with licensing requirements that are linked to funding arrangements. In addition, competitive neutrality issues may arise because local government-owned businesses often provide formal child care services in competition with private providers.

Review and reform activity

State and Territory governments are considering legislation regulating child care under the NCP program. In the 2001 NCP assessment, the Council assessed the ACT as having met its CPA clause 5 obligations in relation to legislation that regulates child care. The ACT repealed the *Children's Services Act 1986*, replacing it with the *Children and Young People Act 1999*.

Commonwealth

While legislation review obligations are not relevant in this case, the Commonwealth provides financial assistance for child care users for both approved and registered care. More assistance is available to families who use approved care because these services meet the government's accountability requirements. Approved child care is care provided by a service that complies with Commonwealth accountability requirements and has been approved to receive Child Care Benefit on behalf of families. Registered child care is generally care that is provided on a more informal basis and where the service does not meet the requirements for 'approved' care.

A New Tax System (Family Assistance) Act 1999 and *A New Tax System (Family Assistance Administration) Act 1999* prescribe eligibility conditions for child care providers who wish to receive financial assistance through the Child Care Benefit. Assistance varies depending on whether the service is part of a scheme that meets the Commonwealth Government's accountability

requirements and/or receives government funding from other sources. Services that are approved for Child Care Benefit are increasingly required to participate satisfactorily in formal quality assurance systems – the Quality Improvement and Accreditation System for long day care centres and Family Day Care Quality Assurance for family day care services. In the future, services that provide outside school hours care services will be required to participate in a formal quality assurance system.

The process of gaining approval for Commonwealth funding is open and information for applicants is readily available. The Department of Family and Community Services produces a guide for existing and potential investors in child care, and direct assistance is also available from the department's offices in States and Territories. The available information covers a national planning system which builds on existing partnerships with State and local governments, as well as information on what needs to be done to succeed in a child care venture (including details about the operating requirements and approval processes for the different types of child care).

The Acts were assessed under the Commonwealth's legislation gatekeeper process and accompanied by a regulation impact statement. The Council assesses the Commonwealth as having met its CPA clause 5 obligations in this area.

New South Wales

New South Wales is planning to replace the *Children (Care and Protection) Act 1987*, which regulates commercial child care services, with a regulation in the *Children and Young Persons (Care and Protection) Act 1998* and has undertaken to consider NCP principles when preparing the regulatory impact statement for the new regulation. New South Wales will release the regulatory impact statement for consultation. New South Wales anticipates the new regulations, which are intended to remove unnecessary prescription, will be introduced before 1 September 2002.

New South Wales is close to finalising reform in this area consistent with CPA clause 5. The Council will make a final assessment in June 2003.

Victoria

Victoria's *Children's Services Act 1996* was subject to the State's legislation gatekeeper process when introduced into Parliament. The Act required service providers to be licensed. It also involved individual regulations that may limit who can provide services and increase costs to service providers. Key examples include:

- more stringent assessment of the fitness and propriety of licensees and their nominees;

- the required payment of licensing fees;
- introduction of pre-employment criminal record checks of staff and others who directly care for children;
- qualified staff be employed in all services;
- the requirement for a minimum two-year early childhood qualification for staff;
- the requirement that staff be trained in first aid.

Victoria considers that there is a clear public benefit in restricting the market through licensing, which safeguards the care and protection of preschool children (Department of Treasury and Finance 2002, p. 147). It also considers that the provisions stimulate, rather than limit, competition. The Government argues that the Act:

- enhances standards that are critical in ensuring the protection and care of children;
- promotes competition among operators, as families will access services that emphasise quality service provision and the accountability of service users;
- ensures market entry of commercial and not-for-profit operators occurs on the same basis as that of public operators;
- brings Victoria into line with other States and Territories and, by implementing a minimum two-year early childhood qualification for staff, promotes the development of training courses by the tertiary sector; and
- increases market opportunities for proprietors through incentives to provide a wider range of children's services by increasing the commonality of requirements for restricted and standard children's services.

The Council agrees there is a case for ensuring a high quality of care for children using child care services. The Council assesses Victoria as having met its CPA clause 5 obligations in this area.

Queensland

A major review of Queensland's child care legislation and its NCP implications has been under way since 1999. The review is examining the impact of licensing fees and the costs of meeting licensing requirements. These costs arise from the requirements to employ qualified staff and meet building and facility standards. The review is also examining the impact of regulating different service types within the child care sector that previously have not been regulated.

Queensland released the public benefit test report for the review for public consultation in December 2001 with comments received until 31 January 2002 used to finalise the report. Queensland anticipates that legislative amendments implementing the final policy approach will be made during 2002. Queensland is nearing completion of its review and reform in this area. The Council will make a final assessment in 2003.

Western Australia

The *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988, which regulate child care and the registration of child carers in Western Australia, are not included in the State's legislation review program. A Bill to replace this and other legislation is being developed. Western Australia has advised the Council that the drafting of this Bill now appears unlikely to be finalised until the second half of 2002, so the Government has commenced a legislation review of the existing child care legislation, to be completed before July 2002. The new Bill will also be checked to ensure compliance with clause 5 of the CPA. The Council will make a final assessment in 2003.

South Australia

The South Australian review of the *Children's Services Act 1993* recommended no change to the legislation. The legislation contains some restrictions on competition, but the review found these to be justified because they seek to ensure the health, safety and welfare of the children and the maintenance of a healthy environment. The review considered the financial and administrative burdens of complying with the Act to be less than the benefits of ensuring required service standards are met. The Government has accepted the report recommendation.

The review of the *Children's Protection Act 1985* found that that restrictions in the Act are unjustified and may limit the ability to appoint an officer best suited to needs of the child. Cabinet has approved draft amendments to the Act.

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

Tasmania

Tasmania transferred the child care provisions of the *Child Welfare Act 1960* to new child care legislation: the *Children, Young Persons and Their Families and Youth Justice (Consequential Repeals and Amendments) Act 1998* and the *Child Care Act 2001*. The legislation, like that of other jurisdictions, provides for the licensing of child care providers and establishes standards of care. The new legislation was assessed under the State's legislation gatekeeper

requirements. The Department of Education prepared a regulatory impact statement in respect of the proposed legislation and made this available for public comment in September 2000 to facilitate gatekeeper assessment of the new legislation.

The Council assesses Tasmania as having met its CPA clause 5 obligations in this area.

The Northern Territory

The Northern Territory review of the *Community Welfare Act* was completed in April 2000. The review recommended: to the extent possible, expressing standards for child care in terms of outcomes to be achieved rather than prescribed practices; clarifying conditions for granting a child care centre licence; and giving consideration to including all purchased child care within the scope of the legislation. The then Government noted the review's comments that the public benefits of restrictions generally outweigh any costs. It also noted that some review recommendations will require legislative change. It delayed any decisions on alternative methods for achieving the voluntary care-related objectives of the Act, pending the development of broader proposals on voluntary care and support services for young children. The current Government indicated that it will consider the review outcomes in 2002.

The Northern Territory is progressing its review and reform in this area. The Council will make a final assessment in 2003.

Table 12.4 summarises the progress of governments' review and reform activity relating to the regulation of child care.

Competitive neutrality

Significant government-owned businesses providing child care services (usually local government), need to apply competitive neutrality principles. All jurisdictions except Queensland, require government-owned child care businesses to set prices that reflect the full cost of production. This means ensuring pricing is based on the costs incurred in providing the service, as well as appropriate adjustments to prices to remove any advantage of public ownership.

Queensland's competitive neutrality policy means that government businesses that provide child care services are not generally of a size that ensures the automatic application of competitive neutrality principles (that is, income in excess of $5 million per year). Queensland encourages smaller government businesses to apply a voluntary code of conduct, based on competitive neutrality principles. Some Queensland local governments choose to apply the voluntary code. Other local governments, however, have chosen

not to apply the code, so child care provision in these areas is not subject to competitive neutrality principles.

Under Victoria's competitive neutrality policy, Government businesses may choose not to apply competitive neutrality principles if they can show that this would compromise the business's broader social, environmental and public policy objectives. Victoria considers the availability of child care services to be an important social policy objective, so a public interest test may be necessary before competitive neutrality pricing is applied. The public interest test requires a transparent exploration by government child care providers of approaches to providing the service, including competitive neutrality pricing, to ascertain which option provides the greatest community benefit. Victoria requires that any subsidy provided child care provision to be transparent and publicly documented.

Table 12.4: Review and reform of legislation regulating child care

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*A New Tax System (Family Assistance) Act 1999* *A New Tax System (Family Assistance Administration) Act 1999*	The Child Care Benefit is provided to families using 'approved' child care services.	The Commonwealth has provided the Council with a public benefit case for the legislation. Approval is necessary to maintain the quality of services. The conditions for approval are not unduly onerous and do not discriminate among providers.		Meets CPA obligations (June 2002).
New South Wales	*Child Care and Protection Act 1987* *Children and Young Persons (Care and Protection) Act 1998*	Licensing	Provisions arising from the Child Care and Protection Act are to be transferred to the Children and Young Persons (Care and Protections) Act. The new provisions are to be subject to gatekeeper provisions. In drafting amendments to the regulatory provisions, New South Wales will release a regulatory impact statement for consultation. It expects that this process, which addresses NCP principles will lead to the removal of unnecessary prescription in the regulations.	New South Wales anticipates that the new regulations will be introduced before 1 September 2002.	Council to finalise assessment in 2003.
Victoria	*Children's Services Act 1996*	Licensing, operating requirements, standards setting	Act was reviewed as part of the gatekeeper process when introduced. Victoria considers that the provisions of the Act are necessary to ensure appropriate standards of child care and will stimulate competition in the industry.		Meets CPA obligations (June 2002).
Queensland	*Child Care Act 1991* Child Care (Child Care Centres) Regulation 1991 Child Care (Family Day Care) Regulation 1991	Licensing, operating requirements, standards setting	The public benefit test report for the review was released for public consultation in December 2001 with comments received until 31 January 2002. The report is being revised based on feedback received during the consultation process.	Queensland anticipates that legislative amendments implementing the final policy approach will be made during 2002.	Council to finalise assessment in 2003.

(*continued*)

Table 12.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Community Services Act 1972* and the Community Services (Child Care) Regulations 1988	Licensing, standards, operating procedures	A Bill to replace this and other legislation is being developed but is unlikely to be finalised until the second half of 2002. A legislation review of the Act has been commenced and will be completed before July 2002. The new Bill will comply with the CPA.		Council to finalise assessment in 2003.
South Australia	*Children's Services Act 1985*	Licensing, standards. operating procedures	Review was completed in 2000.	Act was retained without reform.	Meets CPA obligations (June 2002).
	Children's Protection Act 1993	As above	Review was completed in 2000. It found that that restrictions in the Act may limit the ability to appoint an officer best suited to needs of the child.	Cabinet has approved drafting amendments.	Council to finalise assessment in 2003.
Tasmania	*Child Welfare Act 1960*		The child care provisions of the Act were transferred to new child care legislation, the *Children, Young Persons and Their Families and Youth Justice (Consequential Repeals and Amendments) Act 1998* and the *Child Care Act 2001*. A number of anticompetitive elements were identified in the gatekeeper process. A regulatory impact statement was made available for public comment in September 2000.		Meets CPA obligations (June 2002).

(*continued*)

Table 12.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Children's Services Act 1986*	Licensing, standards setting	Public review was completed in 1999.	Act was assessed as not restricting competition. The Legislative Assembly passed the replacement Act, the *Children and Young People Act 1999*, on 21 October 1999.	Meets CPA obligations (June 2001).
Northern Territory	*Community Welfare Act*	Licensing, standards setting	Targeted review completed in 2000 and is awaiting the Government's response. It recommended: expressing standards for child care in terms of outcomes to be achieved rather than prescribed practices; clarifying conditions for granting a child care centre licence; and giving consideration to including all purchased child care within the scope of the legislation.		Council to finalise assessment in 2003.

Gambling

Gambling has been part of Australian life since European settlement. The industry grew at an unprecedented rate in the last decade, with the greatest expansion occurring in the jurisdictions that allow most liberal access to modern gaming machines and casinos. Government revenues have grown significantly as a result of this expansion in gambling, rising from $1.8 billion in 1989-90 to over $4.3 billion in 1999-2000 (Tasmanian Gaming Commission 2001). In real terms, this is an average annual growth of around 7 per cent .

Gambling encompasses a wide range of activities, including:

- gaming machines and keno;
- casino games;
- TABs and other betting on horse racing, other racing and sporting events;
- lotteries;
- interactive gambling; and
- other forms of betting such as raffles and bingo.

Legislative restrictions on competition

Gambling activity has long been subject to government regulation. Many of these regulations are aimed at achieving governments' social objectives — for example, seeking to ensure the probity of gambling operators and the integrity of gambling products, minimising harm and protecting consumer rights. Achieving these objectives can sometimes involve restricting competition. Regulations that restrict competition include those governing:

- the operation of different types of venue, including the distribution of gaming machine licences;
- access to gaming machine licences (for example, quantity restrictions);
- ownership structures;
- the monitoring of gaming machines;
- the operation of casinos and lotteries, particularly exclusive licences;
- the conditions attached to the privatisation of TABs, particularly exclusive licences;

- betting, including restrictions on the types of event on which betting can be conducted, the treatment of on-course and off-course betting services, advertising and accessibility to interstate gambling services; and
- internet gambling.

Regulating in the public interest

In considering governments' legislation review and reform activity, the Council focused on the CPA clause 5 tests of whether restrictions provide a net community benefit and whether restricting competition is the only way of achieving a government's objectives. Given the reliance of some governments on revenue from gambling activity, it is important to ensure regulatory arrangements focus on addressing public interest objectives, such as minimising gambling-related harm and ensuring the probity of gambling operators and the integrity of gambling products. The Productivity Commission's 1999 inquiry into the economic and social impacts of gambling (PC 1999a) made an important contribution to the development of the principles for regulating gambling in the public interest. Further work on these principles is under way following CoAG's decision in November 2000 to develop a national strategic framework aimed at minimising problem gambling.

Productivity Commission inquiry

At the direction of the Federal Treasurer, the Productivity Commission reviewed the economic and social impacts of gambling, reporting in November 1999. While this inquiry was not an NCP review, the Productivity Commission used an NCP framework to examine the effects of the different regulatory structures that surround Australia's gambling industries. The Productivity Commission considered the relative harm from different types of gambling and examined regulatory measures, providing general guidance to policy-makers on the broad nature of regulations that best address public interest objectives.

The Productivity Commission inquiry found, in broad terms, that lotto and lotteries are least harmful while wagering, gaming and casino table games are more harmful. It also found that certain restrictions aimed at minimising harm, ensuring probity and protecting consumers are in the public interest. Such restrictions include probity measures with appropriate risk management,[3] requirements for operators to provide consumer information

[3] These include measures that are related to the level of risk involved, so they would be more stringent in a casino than for a local bingo night, and where government oversight is necessary for consumer protection. Operators should be responsible for managing the risk to their operations.

on the nature of the games and the likelihood of receiving large payouts, and codes of conduct. The inquiry found these measures provide a net community benefit and also meet the second CPA guiding principle — that is, that the restriction on competition is the only way in which to achieve the policy objective.

The Productivity Commission also examined other measures aimed at harm minimisation, probity and consumer protection, including exclusive licences, requirements based on venue type and restrictions on supply or access. The Productivity Commission questioned whether such restrictions are justifiable in terms of meeting these objectives. It argued, for example, that offering exclusive casino licences is a very indirect way of tackling accessibility and harm minimisation, and that there is little evidence that such licences lead to good social outcomes overall. It also noted:

> … *uncertainty justifies a cautious approach to liberalisation, but it does not justify protecting the interests of entrenched gambling providers (for example, by long-term exclusivity arrangements …).* (PC 1999a, p. 12.12)

The Productivity Commission's work helps define the NCP task for governments. Regarding those measures directly aimed at harm minimisation, probity and consumer protection, the Productivity Commission inquiry found that they satisfy both elements of the CPA clause 5 guiding principle: that is, they provide a net community benefit and are the least restrictive way of meeting those aims. The less direct measures identified by the Productivity Commission — such as exclusive licences, discrimination based on the type of venue and limits on gamblers' access to facilities or on operators' capacity to supply gambling facilities — do not satisfy the second element of the guiding principle. For these types of legislative restrictions, governments must show that there is no less restrictive way in which to achieve the objective of the legislation.

Governments sometimes also impose restrictions for reasons other than harm minimisation, probity or consumer protection — for example, to generate government revenue, to provide special treatment for certain industries or to promote economic development and tourism. For restrictive measures imposed for these other reasons, NCP compliance requires governments to meet both CPA clause 5 tests. Governments thus need to consider any pro-competitive alternatives. The Council has published an analysis of its approach to considering review and reform of gambling legislation, taking account of the Productivity Commission findings (NCC 2000).

CoAG agreement on gambling

On 3 November 2000 CoAG discussed gambling as a matter of national interest, focusing on problem gambling. CoAG agreed that the Ministerial Council on Gambling would develop a national strategic framework (to be implemented by the State and Territory governments) aimed at prevention,

early intervention and continuing support, effective partnerships, and national research and evaluation.

CoAG identified measures to begin the process, including specific ones to apply to gaming machine venues. These include measures that require operators to display warnings about the risks of problem gambling, to enable patrons to be aware of the time spent gambling, and to display information on the chances of winning a major prize. Because the Productivity Commission inquiry established a net public benefit case for these measures, the Council considers that government action to implement them is consistent with CPA clause 5 obligations.

At its meeting in September 2001, the Ministerial Council on Gambling identified five key areas for national research:

- a national approach to definitions of problem gambling and consistent data collection;
- the feasibility and consequences of changes to gaming machine operation;
- the best approaches to early intervention and prevention to avoid problem gambling;
- a longitudinal study of problem gamblers and policy measures that would work for them; and
- benchmarks and ongoing monitoring studies to measure the impact and effectiveness of strategies to reduce the extent and effect of problem gambling.

The research priorities identified by the Ministerial council will assist governments to develop practical policy tools for reducing the negative social impacts of gambling, and will help to distinguish which of those tools are relatively more effective.

Review and reform activity

All States and Territories scheduled NCP reviews of their gambling legislation. Most reviews are completed and governments have yet to act on only a few, mainly complex reviews. Many governments also have new legislation that restricts gambling activity. Clause 5(5) of the CPA obliges them to have evidence to demonstrate that the new legislative restrictions are in the public interest.

- All jurisdictions except New South Wales, South Australia and the Northern Territory[4] have completed reviews of legislation regulating casinos and have announced their policy approaches.

- Victoria, Western Australia and the ACT have reviewed their TAB legislation. New South Wales, Queensland, South Australia and the Northern Territory have repealed TAB legislation and enacted new legislation to privatise their TABs. New South Wales has reported on its clause 5(5) obligations for some of this new legislation. Tasmania has enacted new legislation to corporatise its TAB.

- Victoria, Queensland, Tasmania and the ACT have reviewed lotteries legislation and announced policy responses. Queensland is further reviewing its lotteries legislation in its omnibus review of gambling legislation which is under way. Western Australia has reviewed its legislation, but has not responded to the review recommendations. New South Wales and South Australia are reviewing their legislation.

- Victoria, Tasmania and the ACT have reviewed gaming machine legislation. Victoria and Tasmania have announced their policy responses. The ACT Gaming and Racing Commission is conducting a further review of the ACT's legislation. The other jurisdictions have not finalised their reviews.

- In New South Wales, Victoria and the ACT reviews of racing legislation are complete, and the Governments have announced their responses to the review recommendations. Queensland has reviewed elements of its legislation and announced its response. Western Australia and Tasmania have reviewed their racing legislation but are yet to announce their responses. South Australia is reviewing its racing legislation as part of an omnibus review of gambling legislation, which is still under way.

Table 12.5 summarises the progress of governments' review and reform activity relating to the regulation of gambling.

Casinos

All Australian casinos, except Burswood Casino in Western Australia, operate with some form of exclusive licence. That is, the casinos have exclusive rights to supply casino games within some geographic boundary.

In Western Australia, the exclusivity period for the Burswood Casino has expired, but the legislation still provides considerable protection by restricting casino games to licensed casinos and requiring that persons wishing to establish another casino within 100 kilometres must, among other requirements, house the casino in a complex of similar magnitude to that of

[4] In the Northern Territory, casino regulation is included in the *Gaming Control Act*.

the existing casino. Western Australia's review recommended that the Government consider negotiating with the Burswood Casino operators to remove or relax remaining restrictions, but only after undertaking a full public benefit assessment.

Victoria and Queensland cited the costs of compensating casino operators as the reason for not revoking their exclusive licences. While neither quantified the compensation that may be necessary to revoke the exclusive licences, the prices paid for the licences suggest that compensation may need to be substantial.

The ACT's NCP review found no public interest justification for the exclusive licence held by Casino Canberra but, like Victoria and Queensland, considered compensation for early revocation would be prohibitive. The review recommended that the Government signal that it will not extend the licence. The ACT Government has now stated that it will not extend the exclusivity of the current Casino Canberra licence beyond the current licence period.

The New South Wales Treasury reviewed the exclusive casino licence for Star City Casino in 1998. The review recommended retaining the exclusive licence. It noted that the tender process, the upfront fee and the special casino taxation regime minimise the anticompetitive effects of the licence. The review report also highlighted the ease of monitoring for illegal activity and promoting and monitoring product integrity in a single venue, and considered that the Government is better able to manage social problems if there is only one venue. The Government signalled its support for these conclusions but has asked the Treasury to consider further material in developing the review recommendations. This work is under way. The probity, consumer protection and harm minimisation measures favoured by New South Wales are not among the policy measures for which the Productivity Commission found a net public benefit. New South Wales reported that it expects the revised report to address these issues.

Following a review, South Australia decided that the exclusive casino licence in that State is justified by the casino's contribution to regional development and Government revenue, and by the ease of monitoring gaming activity and implementing harm minimisation strategies in a single venue. South Australia is further reviewing all gambling matters (including its approach to the casino licence) following the 3 November 2000 CoAG meeting and the 1999 Productivity Commission inquiry. This review has not yet reported.

Tasmania repealed the *Casino Company Control Act 1973*, which restricted the ownership of the Wrest Point casino to Australian citizens. Other controls on casino operations arise from provisions in the *Gaming Control Act 1993*. The review of this latter Act did not include the Deed between the Government and Federal Hotels, Australian National Hotels and the Tasmanian Country Club-Casino. [The Deed provides for an exclusive licence for the signatories to operate casinos and machines in Tasmania until 2008. Tasmania has stated that it does not intend extending or renewing the licence

once it as expired. In addition, any new restrictions would be subject to the gatekeeping process.

The Northern Territory is reviewing casino restrictions in the *Gaming Machine Act* and Regulations, and the *Gaming Control Act*. A full public review of these Acts is under way.

Assessment

The Productivity Commission inquiry questioned many of the arguments that governments raised to support exclusive casino licences, including that the casinos contribute to regional development and government revenue, and that monitoring costs are less for a single facility. The Productivity Commission found that a single venue reduces people's access to table games, which may reduce gambling-related harm, but it also considered that more direct measures — such as harm minimisation programs, including promotion of a greater understanding of the risks in gambling, self-exclusion procedures, mandatory codes of conduct for operators, and restrictions on access to funds from ATMs at gambling venues — are likely to be more effective in reducing gambling-related harm. Moreover, the Productivity Commission's suggested measures for improving probity — whereby the type and level of measure are matched to the activity, and the gambling operator meets the costs — are unlikely to significantly increase the monitoring costs faced by government, even if there are multiple venues. Queensland, Tasmania and the Northern Territory have multiple casinos, yet the cost to government of ensuring probity has not been raised as an issue in these jurisdictions.

The Council accepts that the cost of compensating licence holders where exclusive licences are revoked may justify a decision not to revoke current licences. It considers that governments meet CPA clause 5 obligations when they show, through rigorous analysis, that the cost of compensation outweighs the benefit from removing exclusive casino licences. Governments that have decided to retain exclusive licences can facilitate the removal of those licences. As periods of exclusivity shorten, governments may be able to encourage casino operators to relinquish their exclusive licences earlier than the date in the contract agreement. The Northern Territory Government, for example, truncated the exclusive licences held by Northern Territory casinos for the operation of gaming machines. It negotiated early termination (by one year for the Alice Springs casino and by three years for the Darwin casino) by providing a more advantageous tax regime for the casinos compared with that for the other venues with gaming machines. Governments can also decide not to renew exclusive casino licences when they expire, as the ACT Government has done.

The Western Australia Government did not renew the exclusive licence for the Burswood Casino on expiry and it has not issued any other exclusive licences. Exclusive licences are no longer a barrier to entry in Western Australia, although the *Casino (Burswood Island) Agreement Act 1985* contains other significant barriers to entry (see above) which can be removed

only via negotiation with the Burswood Casino. The Western Australian Government is negotiating with Burswood Casino on these matters.

The Council considers that Victoria, Queensland, Tasmania and the ACT have met their CPA clause 5 obligations relating to casino regulation. Western Australia no longer has an exclusive licence provision and is negotiating with the casino operator to remove other barriers to entry. New South Wales, South Australia, Western Australia and the Northern Territory are progressing their CPA review and reform obligations, but did not conclude their work by the 30 June 2002 target set by CoAG.

For the 2003 NCP assessment, New South Wales, South Australia and the Northern Territory will need to demonstrate that their casino licensing arrangements meet the CPA clause 5 obligations. Given the public interest evidence from the 1999 Productivity Commission inquiry, approaches such as not providing new exclusive casino licences, announcing that the Government will not be renewing existing exclusive licences on expiry, and removing any other legislative barriers that forestall new entry and/or favour incumbents would be likely to meet CPA principles, as would the harm minimisation, probity and consumer protection measures identified by the Productivity Commission. The Council will finalise its assessment of CPA compliance in 2003, when it will look for:

- New South Wales to provide the public benefit arguments supporting its favoured approaches to probity, consumer protection and harm minimisation; and

- South Australia and the Northern Territory to complete review and reform activity.

TABs

TAB legislation in every jurisdiction provides an exclusive licence to operate off-course totalisator betting.[5] New South Wales, Victoria, Queensland, South Australia and the Northern Territory have privatised their TABs. New South Wales, Queensland and the Northern Territory reviewed their TAB exclusive licences in the context of their privatisations. While the Council has previously reported that it considers that the clause 4(3) structural reform obligations do not apply to TABs, clause 4(2) does apply. The privatisation process should have addressed the issue of separating industry regulation from the TAB, if there was any such regulation.

The NSWTAB has an exclusive licence to monitor gaming machines (the centralised monitoring system — CMS) and provide linked jackpots, in addition to its exclusive licence to operate as a totalisator. The NSWTAB also

[5] TABs also offer other gambling products, such as fixed-odds betting on sporting events.

has an exclusive investment licence to supply, finance and share the profits from gaming machines in hotels.

New South Wales stated that the State's racing industry[6] would not be viable without the exclusive betting licence. The findings of the Productivity Commission inquiry appear to cast some doubt on this claim. The Productivity Commission argument is that granting the exclusive licence, while providing a means of raising funds (which are then made available to the racing industry), is not guaranteed to result in the 'right' amount of funds or the 'right' number of races. Further, the Productivity Commission considered that the exclusive licence would offer little protection to the NSWTAB (and therefore to racing industry funding) if alternative providers offer home gambling and sports betting services.

New South Wales also argued that the exclusive betting licence ensures at least two totalisators operate and compete in Australia, with the NSWTAB acting as a counter to the large, privatised Victorian TAB. The New South Wales report noted, however, that both totalisators face competition, not just from each other but also from interstate and international wagering operators. Further, the validity of the argument for at least two totalisators rests on the definition of the market they service. If this market is defined narrowly (as pari-mutuel betting), then competition will be lessened if there is only one service provider. The market is broader, however, with pari-mutuel betting being only part of a larger gambling services market where close substitutes for totalisator betting include betting with bookmakers and betting via the internet or the telephone with other betting service providers both in Australia and overseas.

New South Wales further argued that the cost of breaking the exclusive licence agreement (which does not expire until 2012) would more than outweigh any benefits. It explained that after the licence expires, it may consider introducing multiple wagering licences. In the meantime, New South Wales stated that:

> … *[it] will continue to work with other jurisdictions through the Australian Racing Ministers' Conference and the CoAG Committee on Regulatory Reform to minimise any adverse cross-border impacts.* (New South Wales Government 2002, p. 31)

Potential competition questions also arise from the NSWTAB's exclusive investment licence. Because it both monitors the use of gaming machines across all venues and profits from the use and supply of gaming machines through the investment licence, the NSWTAB may face a conflict of objectives as it seeks to both ensure probity and maximise returns. The New South Wales Government reported that controls and procedures within the NSWTAB adequately address this matter. The Government stated that the

[6] In this context, the 'racing industry' refers to thoroughbred, harness and greyhound racing.

NSWTAB 'appears to be diligent in ensuring that staff throughout its CMS and non-CMS operational units are aware that CMS data about club and hotel gaming operations must remain confidential to the CMS unit' (New South Wales Government 2002, p. 32). The Council has no reason to doubt the probity of the NSWTAB, but nevertheless observes that a more structured ringfencing arrangement would give greater assurance on probity matters. The New South Wales Government did not offer any public benefit argument in support of the exclusive investment licence.

Victoria's privatised TAB, TABCORP, has an exclusive 18-year licence for off-course pari-mutuel betting. Victoria reviewed this licence as part of its NCP review of racing and betting. Although not clearly stated in the review report as a net benefit, the exclusive licence is considered to:

> *... guarantee an adequate prize pool. This is largely due to the reality that betting resources can be mobile and will move to a more attractive pool size if one is not available locally. The existence of licensing arrangements in New South Wales which ensure a large pool size is of particular concern. The main issue on which to assess the conditions of TABCORP's exclusive licence therefore lies in the extent to which they are necessary to shore up an adequate prize pool size in Victoria.* (CIE 1998, p. 66)

Victoria's rationale for TABCORP's exclusive licence is similar to that of New South Wales for the NSWTAB exclusive licence: that is, that the exclusive licence is necessary to generate adequate funds for the racing industry. The 1999 Productivity Commission inquiry found that government-enforced exclusivity is not needed to achieve a large betting pool, and the inquiry report does not support the Victorian view. Carrying the Victorian and New South Wales argument to a logical conclusion would mean that a national betting pool is preferable to separate State-based pools because the national pool would be larger and would generate a larger prize pool.

Other governments are at varying stages of their review and reform activity relating to the operation of TABs. Some governments have completed reviews but are still to announce their response to the review recommendations, often because related reviews affecting the racing industry are not yet complete.

- Queensland's omnibus review of gambling regulation includes a review of the new legislation that provides an exclusive licence to the TABQ. This review has not yet reported.

- Western Australia's review of its TAB legislation recommended that the legislation should allow the Minister to grant additional off-course totalisator licences. Western Australia is considering this recommendation now it has completed its review of the governance structure of the racing industry.

- South Australia is reviewing its TAB arrangements in the context of its overall approach to regulating gaming following the 1999 Productivity

Commission inquiry and CoAG's national approach to problem gambling. South Australia sold its TAB in August 2001.

In Tasmania, the *Racing Regulation Act 1952* regulates the operation of totalisator betting and the relationship of the TAB (now the TOTE) with the racing industry. (The Tasmanian Government repealed the minor gaming provisions from the *Racing and Gaming Act 1952* in 2001, and introduced new minor gaming provisions in the Gaming Control Act. The Racing and Gaming Act was renamed the *Racing Regulation Act 1952* as all gaming provisions have been repealed from that Act leaving the regulation of racing and race betting only.) Tasmania is reviewing the elements of the Act together with the *Racing Act 1983*. Tasmania's intends to develop new legislation to replace both Acts, and to review this legislation under the State's legislation gatekeeper process. Tasmania has not scheduled an NCP review of the legislation governing the operation of the TOTE. As part of developing legislation to replace the *Racing Regulation Act 1952*, Treasury is considering options for the future regulatory framework for TOTE Tasmania. This has included discussions with TOTE about possible regulation under the Gaming Control Act on a non-exclusive basis.

- The ACT review recommended that the Government allow new licences for TABs operating wholly within the ACT, but not allow interstate totalisators until systems are in place to extract racing turnover taxes (and any other turnover taxes and licences) from wagers that originate in the ACT. The Government announced partial support for these recommendations. It did not support the recommendation to allow fixed odds betting on racing at venues other than licensed racecourses. It also noted that care needs to be exercised in assessing the social impacts of opening up the totalisator market. Further, the Government noted that loss of TAB revenue from clients who do not live in the ACT has implications for ACTTAB, the Government and the industry, and needs to be addressed.

- The Northern Territory Government reviewed its new TAB legislation but has not yet announced its response. The Northern Territory Government advised that it has accepted the review recommendations, although these have not been given to the Council. The Northern Territory has undertaken to supply the Council with a copy of the review and the Government's response.

Assessment

The governments that have reviewed legislation governing the operations of their totalisators have generally argued that the jurisdiction-based exclusive licence held by the totalisator is warranted. Most jurisdictions consider that the exclusive licence is required to safeguard the totalisator prize pool and, consequently, the funding provided to the racing industry. This view is at odds with the Productivity Commission inquiry finding that while there is a the case for government intervention to overcome the market failures in the

racing industry,[7] TAB exclusivity does not appear necessary to ensure adequate funding for the racing industry.

Given the findings by the Productivity Commission inquiry, the Council's view is that governments that retain exclusive TAB licensing arrangements as being necessary to ensure adequate funding of the racing industry have not satisfactorily addressed their obligations under CPA clause 5. The Council concedes, however, that the cost of compensating some TABs for revoking their exclusive licence is likely to be high (as New South Wales has argued) and may be a reason for retaining exclusive licences until their expiry dates.

The review outcomes in Western Australia and the ACT, along with the New South Wales Government's suggestion that it may consider multiple wagering licences after the current NSWTAB licence expires in 2012, indicate scope for removal of exclusive TAB licences in those jurisdictions. Governments' concern about shoring up prize pools and the cross-border questions (including revenue and taxation sharing arrangements) raised by New South Wales and the ACT suggest that an interjurisdictional approach may be needed to consider the future of exclusive TAB licences. Governments have not yet proposed considering TAB licensing issues in this way.

In the 2003 NCP assessment, the Council will review governments' compliance with CPA clause 5 in relation to TAB exclusive licences. While acknowledging that exclusive licences are unlikely to be removed during the life of the NCP legislation review and reform program, and that arguments such as the cost of compensating TABs for the loss of their exclusive licences may be relevant, the Council will look for governments to consider this issue further, perhaps through an intergovernmental process. Also in the 2003 NCP assessment, the Council will consider remaining legislation review and reform matters relevant to TABs, including:

- the outcome of the Queensland review of the TABQ licence;
- the regulation of TAB operations in South Australia following that State's new review;
- the outcome of Tasmania's review and reform activity, as well as its proposals for reviewing legislation regulating the operation of the TOTE; and
- the Northern Territory's response to the review of its new TAB legislation, including the public benefit reasoning for any restrictions on competition.

[7] Market failure arises because, in the absence of industry regulation, providers of wagering services could avoid contributing to the costs of supplying the racing industry product on which bets are placed. If the providers of the wagering services did not contribute to the racing industry, then the racing industry would decline and would provide too few races.

Lotteries

Like TAB legislation, lotteries legislation is characterised by exclusive licences. Governments usually justify exclusive licences for lotteries on the basis that the licence is necessary to ensure a large enough prize pool to make the lottery sufficiently attractive. The Productivity Commission inquiry did not support this argument, concluding that governments do not need to legislate exclusive arrangements to achieve a large prize pool.

Most governments have reviewed their legislation regulating lotteries. Some jurisdictions have introduced or are considering arrangements providing for more than one lottery provider. Several governments have commenced broad reviews of their gambling regulation, which include lotteries regulation.

- In New South Wales, the *Public Lotteries Act 1996* governs lotteries and other games such as lotto and soccer pools. This Act provides for the licensing of operators of commercial lotteries and the regulation of such games. When NSW Lotteries was corporatised under the *NSW Lotteries Corporatisation Act 1996*, it was granted an exclusive licence for its existing games until July 2007. New South Wales will conduct statutory five-year reviews of these Acts before November 2002, in which it will consider NCP issues.

- After reviewing the *Tattersall Consultations Act 1958* Victoria repealed this Act and replaced it with the *Public Lotteries Act 2000*. The new legislation allows for multiple lotteries licences from 2004, when the Tattersall's exclusive licence expires. Victoria has committed to actively seeking the cooperation of New South Wales in facilitating a national market, once the exclusive licence in that State lapses in 2007. It has also stated that it intends to issue public lottery licences after July 2007 through a transparent, contestable, competitive tender.

- Following its NCP review, the Queensland Government revoked the statutory monopoly provisions applying to the Golden Casket Corporation and replaced them with a limited duration exclusive licence, to allow the corporation to adjust to the commercial environment following its corporatisation. Queensland is now conducting a broad inquiry into gambling regulation, which includes lotteries regulation. This inquiry is due to report in 2002.

- Western Australia's NCP review of its *Gaming Commission Act 1987* concluded that the existing regulatory regime is overly inflexible because it does not allow the Government to appoint a lotteries supplier other than the Lotteries Commission. The review recommended a less restrictive regulatory framework which provides for the Government to license operators other than the Lotteries Commission if it is in the public interest. The Government is considering its response to the review.

  Western Australia also reviewed the *Lotteries Commission Act 1990* and associated rules. This Act provides for the powers and rights of the

Lotteries Commission, including: allowing the commission to enter into agreements with other State lotteries agencies to jointly conduct lotto and soccer pools; allowing it to use trading names and symbols; allowing it to obtain permits directly from the Minister; making it an offence for a person, without the commission's approval, to derive a fee or reward for promoting or forming a syndicate to purchase a ticket in a game conducted by the commission; and allowing the commission to enjoy the status, immunities and privileges of the Crown. The review recommended retaining the restrictions in the Act. The Council has not been able to establish yet whether the current powers of the Lotteries Commission are consistent with a more competitive lotteries market in the State. Competitive neutrality obligations (CPA clause 3) will be relevant if Western Australia introduces a competitive lotteries market that includes the Government-owned Lotteries Commission. The Council will finalise its assessment of Western Australia's compliance with CPA clauses 3 and 5 in relation to lotteries in 2003.

- South Australia has a review of lottery legislation under way as part of its omnibus review of gambling legislation.

- Tasmania completed a review of its gaming legislation in 2000. This review considered the Gaming Control Act, which regulates lotteries in the State. The Tasmanian Government amended the Act in 2001, to provide for the February 2002 expiration of the Tattersall's exclusive licence to sell lottery tickets over the counter, and again in 2002, to extend until 2010 Tattersall's authority to sell lottery tickets in the State. The Gaming Control Amendment (Foreign Games Permit) Bill 2002, when enacted, will provide for the granting of permits (to sell lottery tickets over the counter) to any lottery or gaming operator licensed outside Tasmania.

- The ACT reviewed the *Lotteries Act 1964* as part of its NCP review of gaming and betting legislation. The review found that the current duopoly in the ACT lotteries market derives from the characteristics of the market rather than any legislative restrictions. It found there is no barrier to new entrants. The review recommended no change to the legislation and the Government accepted this recommendation.

- Lotteries in the Northern Territory are regulated under the *Gaming Control Act*, which is currently under review).

Assessment

- The New South Wales Government's statutory five-year review in 2002 will need to show that the exclusive licence is warranted. If it cannot, the Government will need to at least discontinue the licence on expiry.

- Victoria has established the conditions for multiple provision of lottery services after the Tattersall's exclusive licence expires in 2004, so it complies with CPA clause 5.

- Queensland and South Australia need to complete their broader gambling reviews and determine outcomes for lotteries.

- Western Australia's review provides a regulatory framework to address the State's CPA obligations. The Council will look for Western Australia to implement the review recommendations.

- Tasmania now has competing suppliers of over-the-counter lottery services, so it complies with the CPA clause 5.

- The restrictions in the ACT legislation are aimed at probity and do not limit the number of lottery providers. The ACT legislation complies with the CPA clause 5.

- The Northern Territory complies with the CPA clause 5.

Racing and betting

All States and Territories have legislation regulating the racing industry. This legislation restricts competition, typically by providing for the types of race meeting that can be held, the conduct of bookmakers (including licensing), the governance of the racing codes, restrictions on who may participate in race meetings, restrictions on betting on other sports events, and so on.

New South Wales, Victoria, Western Australia and the ACT have completed reviews of all their racing and betting legislation. All other States and Territories, except Tasmania, had reviews under way at 30 June 2002. Tasmania has restructured its racing industry and is drafting new legislation, which it will assess via its legislation gatekeeping process.

The New South Wales review recommended only minor changes to the State's racing and betting legislation. The New South Wales Government accepted the review recommendation to allow bookmakers to operate as proprietary companies with the directors being licensed bookmakers and the shareholders being directors, close family members or associate bookmakers.[8] New South Wales has retained a requirement in the *Racing Administration Act 1998* that a $200 minimum apply to bets placed over the telephone with a New South Wales bookmaker. The minimum bet provision limits competition by restricting the bets that New South Wales bookmakers can accept over the telephone. Similar restrictions do not necessarily apply to telephone bets with other betting operators. In particular, they do not apply to telephone bets taken by the NSWTAB or bookmakers in Queensland, Victoria and the ACT.

The Council raised the matter of the $200 minimum telephone bet with New South Wales during the 2002 NCP assessment. The Council's concern is that

[8] Bookmakers had been restricted to operating only as sole traders.

the measure restricts competition, albeit to a limited degree, while not appearing to contribute to harm minimisation objectives. The review noted that lowering the $200 limit would:

> *... provide greater accessibility to the betting public of bookmaker services, and hence the potential for an expansion of gambling .... increased competition between licensed bookmakers (whether in New South Wales or interstate) and TABs for the off-course market would ensue. Logically, such action would tend towards increasing gambling activity overall.* (Department of Gaming and Racing 2001, p. 99)

The restriction is anticompetitive because it applies differently to different providers of gambling services, in this case only to New South Wales licensed bookmakers. Because interstate bookmakers and the TABs do not face the $200 minimum bet restriction, removing the limit may not increase the level of betting but merely redistribute the bets from those currently able to offer this service, such as the NSWTAB, to the bookmakers. Further, it could be argued that the $200 limit may encourage people to place larger bets than they would otherwise, and thus it may not contribute to harm minimisation.

Licensed bookmakers are a small but significant sector, accounting for around 15 per cent of betting in New South Wales in 1997-98 (Department of Gaming and Racing 2001, p. 31). The impact of the $200 limit on them is not readily apparent; the Council has no access to data that could be used to gauge the value of the bets which may otherwise have been made with New South Wales bookmakers. It is too early to gauge the extent of any redistribution of bets among the TABs and bookmakers in those jurisdictions which have removed the minimum bet requirement. Anecdotal evidence suggests that smaller wagering may be considerable, implying there is some impact on New South Wales bookmakers. The extent to which there is an impact on competition is unclear, however, particularly if the effect is to redistribute wagering to other providers of gambling services.

The review report also considered the current cross border restrictions on providers of gambling services for thoroughbred, harness and greyhound racing. The Racing Administration Act prevents advertising in New South Wales by betting operators not licensed in New South Wales. While it is not illegal to place or accept bets with the betting operators not licensed in New South Wales, the legislation is anticompetitive because it allows one sector of the industry — the New South Wales licensed betting operators — to carry on an economic activity while preventing another sector of the industry — those offering betting services licensed outside New South Wales — from engaging in the same activity. The report states that one of the objectives of this restriction is to 'minimise the opportunity to use New South Wales racing as a betting platform without contributing to its costs' (Department of Gaming and Racing 2001, p. 86). The report considered that the restriction is justified

because it meets this objective.[9] The Government accepted this recommendation.

The review report considered three less restrictive approaches to ensuring adequate funding for the racing industry proposed by the Productivity Commission inquiry and by a submission to the New South Wales NCP review by Jupiters. These options are; an interjurisdictional tax-sharing arrangement; a levy on bets (although the review report does not specify whether this would apply to all bets or only some bets, such as those made with interstate bookmakers); and allowing the racing industry to enter contractual arrangements with interstate bookmakers who use its products. Each of these options was dismissed by the New South Wales review.

The review report does not present convincing public interest evidence to support its approach or for disregarding the three Productivity Commission inquiry proposals. It implies that the revenue sharing proposal is impractical because telephone betting (both with TABs and bookmakers) is not a new betting option, and because smaller jurisdictions may be disadvantaged by tax sharing. The review does not discuss the nature of the issues relating to telephone betting or recognise that it is the smaller jurisdictions which are removing restrictions (or considering doing so). It also states that for the ACT and the Northern Territory bookmakers 'there is insufficient margin to support a viable bookmaking business and tax sharing' (Department of Racing and Gaming 2001, p. 83). It does not explain why this is the case.

The review report does not support a levy to fund the industry, arguing that the United Kingdom racing industry, which is funded by a levy, is not in a good financial position. The review does not draw out the link between a levy on licensed bookmakers and the position of the United Kingdom racing industry.

The review report dismisses contractual arrangements with interstate bookmakers arguing that New South Wales racing already has complex arrangements with interstate racecourses, TABs, clubs and hotels for the use of the racing image, and that New South Wales racing reached these on the understanding that bookmakers are sole traders. The review report considers that the new corporate bookmakers can free ride on these arrangements and that it would be difficult, if not impossible, to 'segregate the bookmakers from existing avenues of broadcast of the racing image without adversely impacting on the existing arrangements' (Department of Racing and Gaming 2001, p. 83). The review report does not explain why this is the case.

The review report considers that in addition to achieving the funding objective, the advertising restriction also prevents a significant increase in

[9] The revenue streams for the New South Wales racing industry are overwhelmingly derived from the payments from the NSWTAB to the industry bodies under the Racing Distribution Agreement. Local licensed bookmakers and on-course totalisators also make a contribution

advertising of betting products, and consequential adverse social impacts from increased gambling. The Council considers that restrictions on advertising aimed at harm minimisation comply with the CPA obligations. Concerns about competition issues arise, however, when restrictions are applied in a discriminatory manner, without justification, as in this case. The review report does not consider the option of applying the advertising restriction more generally.

New South Wales reviewed the *Sydney Turf Club Act 1943*, finding no restrictions on competition. It also reviewed the *Australian Jockey Club Act* 1873, which extends to 2042 the period for which the trustees of the Randwick Racecourse are enabled to grant leases. The Government did not change the Australian Jockey Club Act, considering that the cost of breaking the leases would outweigh any benefits. The Government will the review the Act again after 10 years, consistent with the CPA clause 5(6).

Victoria has accepted all the recommendations of its racing industry review, except for expanding sports betting (because it considered more outlets would encourage problem gambling and lead to difficulties in ensuring probity). Reform is mostly complete, and some outstanding issues on bookmakers' operations which were the subject of consultation with the industry, have been resolved and will be implemented in 2002-2003. Victoria removed the previous requirement that telephone bets with Victorian bookmakers be a minimum of $200.

The Queensland Government has conducted an NCP review of the racing and betting legislation and consequently removed some restrictions on bookmakers, including the $200 minimum bet limit. The Government now has no direct involvement in the racing industry except to ensure probity and integrity. Bookmakers are now licensed by their racing industry controlling bodies. As noted in the 2001 NCP assessment, the Council remains concerned that this arrangement could result in a conflict of interest for the industry bodies, because allowing gamblers greater access to bookmakers potentially reduces TAB revenue and, ultimately, the revenue available to the racing codes. The Queensland Government is planning further changes to the racing and Betting Act, including implementing the remaining recommendations and some new proposals. It will undertake a public benefit test on these changes in accordance with CPA obligations.

Western Australia has completed a review of its racing industry legislation, and Bills to amend the legislation are before the Parliament. These Bills will:

- repeal the *Racing Restriction Act 1927* and the *Western Australian Greyhound Racing Authority Act 1981*;
- amend the *Racing Restriction Act 1917* to remove the prohibition of horse racing other than thoroughbred and trotting racing, delete obsolete controls over charity race meetings and remove restrictions on individuals and organisations that can undertake betting activities;
- reduce costs to individuals or organisations engaged in betting activities;

- improve competitive neutrality among businesses engaged in different forms of betting, and between the betting industry and other gambling industries; and

- remove commercial constraints on the TAB.

Western Australia has not acted to implement all the review recommendations. It has undertaken to provide the public interest case for the nonimplementation to the Council (Department of Treasury and Finance 2002 p. 24).

South Australia has repealed the *Racing Act 1976* and developed replacement legislation (*Authorised Betting Operations Act 2000*) which is being considered as part of the State's omnibus gambling legislation review. South Australia has also legislated to allow proprietary racing with the introduction of the *Racing (Proprietary Business Licensing) Act 2000*. This Act allows the conduct of race meetings (where betting is allowed) by bodies other than the racing codes.

The ACT reviewed its legislation regulating bookmakers in conjunction with the review of its TAB legislation. It repealed the *Bookmaker's Act 1985* and replaced it with the *Race and Sports Bookmaking Act 2001*. The new Act implements a number of reforms in line with the review recommendations, including transferring responsibility for licensing bookmakers from the racing clubs to the ACT Gaming and Racing Commission, and removing the limits on telephone betting and the number of sports betting licences. A handful of recommendations are still to be implemented, including allowing more flexibility in the location of sports bookmaking offices and in betting security guarantee arrangements.

The ACT also repealed the *Racecourses Act 1935*. Racing clubs are now regulated by the *Racing Act 1999*, which provides for other racing organisations also to conduct races for the purpose of betting. In addition, the Act establishes the independent ACT Gambling and Racing Commission, thus removing direct Ministerial control of the industry. The ACT review of this legislation found that the regulation is necessary to maintain public confidence in the ACT racing industry — by ensuring product quality, protecting consumers and minimising the potential for criminal activity — and to minimise problem gambling and the associated social costs.

Tasmania is preparing new legislation following a restructure of its racing industry. It intends to review this legislation via its new legislation gatekeeping process. The Northern Territory has a review of the *Racing and Betting Act* and Regulations and the *Unlawful Betting Act* under way.

Assessment

No government had completed review and reform activity relating to racing and betting legislation at 30 June 2002. Victoria and the ACT are both significantly advanced in their activity, with only a small number of review

recommendations still to implement. The reform being undertaken in these jurisdictions adequately addresses competition questions, and the Council considers that both will comply with their CPA clause 5 obligations relating to the regulation of the racing industry once all the reforms have been implemented.

New South Wales has completed its NCP review and reform activity relating to the racing industry. The Council considers that New South Wales has not met its obligations under the CPA clause 5. In relation to the Racing Administration Act provision that requires a minimum telephone bet of $200, the Council cannot see a public interest rationale for imposing a minimum bet requirement, although it concedes that the $200 minimum may have at most a small impact on competition in gambling services in New South Wales. The Council also has concerns that the review conclusion on advertising restrictions is not supported by convincing public interest reasoning. The review's argument that the restriction is necessary to safeguard the funding base of the New South Wales racing industry is difficult to reconcile with the findings of the Productivity Commission inquiry into gambling. Certainly, the review does not provide convincing evidence for rejecting the Productivity Commission inquiry findings relating to racing industry funding. As previously discussed, the Council accepts that limiting the marketing and advertising of gambling products may reduce the adverse social impacts of gambling and so may be consistent with the CPA clause 5. In this case, however, the public interest rationale for discriminatory treatment of different providers is not well founded.

Western Australia and Tasmania are also well advanced in their review and reform activity. Western Australia has completed its NCP review and drafted legislation which, when enacted, will satisfactorily address competition issues, subject to the public benefit arguments for not implementing some review recommendations. Tasmania has prepared new legislation, which it will review via its legislation gatekeeping process. The Council will finalise its assessment of Western Australia's and Tasmania's compliance with the CPA clause 5 in 2003.

Queensland, South Australia and the Northern Territory each had reviews of their racing industry legislation under way at 30 June 2002. The South Australian review is part of a broader omnibus review of gambling. The Council will finalise its assessment of these jurisdictions' compliance with the CPA clause 5 in 2003.

Gaming machines

All States and Territories, except Western Australia, have completed reviews of gaming machine legislation or have reviews under way. In Western Australia, gaming machines are located only in the Burswood Casino. The Western Australian Government considered the regulation of gaming machines when reviewing its casino legislation.

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* regulate gaming machine activity. A joint review of these Acts has been under way since 1999. Since the NCP review began, the Government has implemented changes to gaming machine regulation, including a freeze on the number of machines in hotels and clubs. On 26 July 2001, the New South Wales Government announced a package of gaming reforms, including caps on machine numbers (both in total and by venue type), markets for existing licences, limits on operating hours for gaming machines, restrictions on advertising and other harm minimisation measures. The harm minimisation reforms announced by New South Wales (such as the requirement for clubs and the casino to establish links with problem gambling counselling services, restrictions on advertising and restrictions on hours of opening) fall within the range of those measures endorsed by the Productivity Commission and CoAG, so meet the CPA clause 5 guiding principle. New South Wales is preparing a report on the public benefit arguments for other restrictions, including the caps on machine numbers in total (104 000) and at venues, the different cap for different types of venue (450 for clubs and 30 for hotels), and the effects of allowing a transferable gaming machine permit scheme.

In Victoria, two operators (Tattersall's and TABCORP) own the gaming machines in all venues. The Victorian review of the *Gaming Machine Control Act 1991* found the two-operator structure to be anticompetitive and not justified on public interest grounds. Recognising that the structure is embedded in the contract arrangements with the two suppliers, the Government has undertaken to address this matter when the licences expire in 2012. Most of the other competitive restrictions in the Act are the result of the two-operator structure.

Victoria also regulates the gaming industry through measures such as Statewide and regional caps, advertising restrictions and requirements to provide consumer information on gaming machine operations. The Productivity Commission inquiry's public benefit analysis provides a case for some of these restrictions, such as those requiring operators to provide consumer information. These restrictions therefore meet the CPA clause 5 guiding principle. For the other restrictions, Victoria argued that:

> *As a broad principle, the Government believes that the costs of a state-wide cap on recreational gamblers must be assessed against potential positive benefits of restricting access to problem gamblers. Given the nature and magnitude of negative impacts of gambling, the public interest favours a continuing cap in the absence of alternative and proven strategies.*
>
> *In particular, as the evidence is conflicting and not clear on this policy issue, it is preferable this time to employ the precautionary principle and retain the cap on gaming machines.* (Department of Treasury and Finance 2002, p. 137)

Victoria noted that the Productivity Commission's observations about caps being blunt policy instruments related to the effectiveness of caps in reducing harm. It argued that it introduced regional caps to:

> *... address the adverse consequences arising from disproportionate levels of gambling expenditure in disadvantaged regions.* (Department of Treasury and Finance 2002, p. 137)

Tasmania also completed a review of its gaming machine regulation, finding that the restrictions on gaming machine operations should be retained on the grounds of probity. The ACT completed an initial review of its *Gaming Machine Act 1987* but subsequently referred the Act for review by the new ACT Gambling and Racing Commission. The review report is due in mid-2002. Queensland and South Australia are reviewing their gaming machine legislation as part of the omnibus gambling reviews under way in each State. The Northern Territory also has a review of its gaming legislation under way.

Assessment

Only Victoria and Tasmania have completed reviews of gaming machine regulation. All others still had reviews under way at 30 June 2002. Several jurisdictions have re-submitted their gaming machine regulation for review as part of broader omnibus reviews of gambling regulation.

The Council considers that Victoria has met its CPA clause 5 obligations relating to gaming machine legislation. The Victorian Government has imposed regional caps on machine numbers. While the Productivity Commission inquiry did not provide strong support for caps as a means of reducing the harm from problem gambling, the interjurisdictional work being undertaken through CoAG is researching the effectiveness of a number of harm minimisation measures, including caps on machine numbers. The Council acknowledges also that Victoria has indicated its willingness to address the gaming machine supply duopoly when the current licences expire.

Tasmania's legislation contains some significant restrictions on competition, most notably the exclusive Deed between Tasmania and the Federal Hotels group for the operation of gaming machines for 15 years from 1 January 1994, with the introduction of gaming machines into hotels and clubs from 1997.Tasmania has stated that it has no intention, of entering into any more exclusive arrangements in the gaming area, at this stage. The Government has stated that while it is not possible to predict future circumstances, if a future Government were to enter into any form of exclusive arrangement, this would only occur if such a policy was found to be fully justified in the public interest. Any new restrictions on competition would be subject to the gatekeeper process. The Government noted that breaking the Deed would potentially expose Tasmania to large compensation payments. All other jurisdictions have not completed their review and reform activity, so are yet to meet their CPA clause 5 obligations. Each is progressing its review, however, and the Council will finalise its assessment of CPA compliance in 2003.

Internet gambling

The Commonwealth, Victoria, Queensland and the ACT have enacted legislation governing internet gambling providers.

The Commonwealth has passed legislation to ban the issue of internet gambling licences that would provide gambling services to Australian players. The Council reported on this matter in the 2001 NCP assessment, finding that the Commonwealth was still to provide a net public benefit argument supporting its legislation. In particular, the Commonwealth did not demonstrate that it could meet its objectives only by restricting competition. The Commonwealth has replied that its objective is to minimise the opportunity for problem gamblers to extend their problems to online gambling. It has not, however, addressed the issue of whether banning internet gambling is the only way of achieving this objective.

Victoria enacted the *Interactive Gaming (Player Protection) Act 1999* to enhance consumer protection. The measures in Victoria's Act are consistent with those endorsed by the Productivity Commission inquiry. The Council considers that the Victorian legislation complies with the CPA clause 5.

Queensland is reviewing the *Interactive Gaming (Player Protection) Act 1998* as part of its omnibus review of gambling legislation. The Council will finalise its assessment of Queensland's review and reform activity in 2003.

The licensing provisions of the ACT's *Interactive Gambling Act 1998* are aimed at ensuring the probity of gaming suppliers and the integrity of their operations in the interests of consumer protection. The granting of licences is subject to criteria designed to ensure the probity of the applicant and the integrity of the games on offer. The Minister also has a discretionary power to grant licences, which the ACT believes is necessary 'to give a further assurance that the provider of the licence will be of good character and possess the capacity to run a gambling operation in accordance with regulations' (ACT Government 2002, p. 49).

The Council is wary of licensing processes that provide entities, including Ministers, with discretionary powers where the criteria for applying the discretion are not defined. At a minimum, the lack of criteria creates a perception that the power may be used, for example, to exclude new entrants to an industry. In this case, a related question concerns the reason that the licensing body would fail to fulfil its obligations. To avoid these dangers, the Council considers objective public criteria should be specified to guide the Minister's application of the discretion. Objective criteria would focus on probity and consumer protection objectives, and would avoid the protection of incumbent service providers. The Council would consider the ACT to have met its CPA clause 5 obligations if the Government develops such criteria. The Council will review the ACT's progress on this matter in 2003.

Minor and other gambling

The category of minor and other gambling encompasses games such as keno, charitable fundraising and trade promotions. The incidence of problem gambling with these activities is usually low and probity hurdles are often lower, reflecting the nature of the activities and their operators, and the low level of funds involved.

New South Wales repealed the *Gaming and Betting Act 1912* and replaced it with three Acts: the *Gambling (Two Up) Act 1998*, the *Unlawful Gambling Act 1998* and the Racing Administration Act. It is reviewing the Racing Administration Act in the general racing legislation review. The Gambling (Two Up) Act is new legislation which New South Wales reported was reviewed before Parliamentary debate. As well as providing for the rules of the game, protection to minors and other probity and harm minimisation measures, the Act restricts the lawful playing of Two Up to games played in accordance with the Act on Anzac Day and to games played in Broken Hill. The Government is still to provide the public benefit evidence in support of these restrictions. New South Wales reported that the Unlawful Gambling Act is not for NCP review.

New South Wales is undertaking a combined review of the *Lotteries and Art Unions Act 1901* and the *Charitable Fundraising Act 1911*. It has not completed its review and reform activity by the CoAG deadline of June 2002 so has not met its CPA clause 5 obligations. It is progressing these matters, however, and the Council will finalise its assessment in 2003.

The Victorian review of the *Club Keno Act 1993* reported in September 1997. The Victorian Government has not responded to the review recommendations. It advised the Council in 2002, that its priority is problem gambling and that club keno does not generate significant problem gambling concerns. Further, the Government intends to review its entire gambling legislative framework within the next 12 months and will consider the Club Keno Act as part of that review.

The Club Keno Act includes two restrictions on competition: these are who may conduct the game and where the game may be played. Only the holders of the gaming licences under the Gaming and Betting Act may supply keno games. This operates as a barrier to entry and means that only Tattersall's and TABCORP can supply these games. The Council understands that in practice, the two operate as one through a joint venture. Club Keno can only be played at licensed gaming venues, thus precluding other venues from offering this game. Club keno might therefore be less popular because its growth is limited and the incentives on the suppliers for innovation and promotion are limited.

The Council notes that club keno is a minor game in the overall gambling market and the Government's failure to act on this matter might therefore have had only minor consequences. It considers, however, that the Government has had the opportunity to respond to this review and has not

done so by the 30 June 2002 deadline. It has therefore not met its CPA clause 5 obligations. The Council notes, however, that the Government intends to conduct a review of gambling legislation which will allow it to address this matter. The Council will finalise its assessment in 2003.

Queensland is considering its keno and charitable and nonprofit gambling legislation as part of its omnibus gambling legislation review. The Council will finalise its assessment in 2003 when the review is complete.

Tasmania has drafted new legislation covering minor gambling, including charitable and nonprofit gambling. The Government has considered this legislation under its legislation gatekeeper provisions.

Table 12.5: Review and reform of legislation regulating gambling

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Australian Jockey Club Act 1873*	Lease arrangements for crown land	Review was completed in 1999.	Restrictions in the Jockey Club Act (lease arrangements for Crown land) were found to be in the public interest and retained because the potential cost of breaking the lease would outweigh the benefits. Review found that the Turf Club Act does not restrict competition.	Meets CPA obligations (June 2002).
	Sydney Turf Club Act 1943	Constitutes and incorporates the Sydney Turf Club			
	Liquor Act 1982 *Registered Clubs Act 1976*	Market conduct, operations	Public benefit issues for reforms not related to harm minimisation are being addressed in a report being prepared for Government consideration.		Council to finalise assessment in 2003.
	Gaming and Betting Act 1912	Licensing, market conduct	Not for review.	Act repealed and made into three parts for separate review (*Unlawful Gambling Act 1998*, *Gambling (Two Up) Act 1998* and *Racing Administration Act 1998*).	Meets CPA obligations (June 2001).
	Unlawful Gambling Act 1998		Act is exempt from review.		Meets CPA obligations (June 2001).
	Gambling (Two Up) Act 1998	Market conduct, rules	Review was completed in 1998.	No change.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Racing Administration Act 1998* *Greyhound Racing Authority Act 1985* *Harness Racing Act 1977* *Bookmakers Taxation Act 1917* *Thoroughbred Racing Board Act 1996*	Market conduct, operations, licensing	Review was completed in 2001. It recommended retaining existing restrictions on the conduct of racing and betting, with the exception of a relaxation on some operating structures for bookmakers.	The Government accepted the review recommendations.	Does not meet CPA obligations (June 2002).
	Lotteries and Art Unions Act 1901 *Charitable Fundraising Act 1991*	Conduct, operations	Review is under way.		Council to finalise assessment in 2003.
	Lotto Act 1979 *NSW Lotteries Act 1990* *Soccer Football Pools Act 1975*		Review was not required.	Acts were repealed and replaced by the *NSW Lotteries Corporatisation Act 1996* and the *Public Lotteries Act 1996*.	Meets CPA obligations (June 2001).
	Totalizator Act 1916 *Totalizator (Off-Course Betting) Act 1964*	Market conduct, rules, establishment of TAB	Review was not required.	Acts were repealed and replaced by the *Totalizator Act 1997*.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Totalizator Act 1997* (and amendments)	Licensing, exclusive licences	New legislation CPA clause 5(5) applies. Review of some restrictions and exclusive licences found a net public benefit.		Council to finalise assessment in 2003.
	NSW Lotteries Corporatisation Act 1996 *Public Lotteries Act 1996*	Licensing, exclusive licences	New legislation CPA clause 5(5) applies. Statutory five-year reviews are to be completed by November 2002.		Council to finalise assessment in 2003.
	Casino Control Act 1992	Exclusive licence, market conduct	Review was completed in 1998. Updated review is to be submitted to Government in 2002.		Council to finalise assessment in 2003.
Victoria	*Tattersall Consultations Act 1958*	Legislated monopoly	Review was completed in 1997.	*Public Lotteries Act 2000* repealed this Act. New Act allows for multiple suppliers.	Meets CPA obligations (June 2002).
	Gambling Legislation (Responsible Gambling) Act 2000 *Gambling Legislation (Miscellaneous Amendments) Act 2000*	Caps, regional caps, advertising restrictions, conduct.	Gatekeeper provisions apply.	New legislation was accepted. These amendment Acts introduced responsible gambling initiatives and key restrictions such as regional caps and advertising controls in all gambling-related legislation in Victoria.	Meets CPA obligations (June 2002).
	Gaming No. 2 (Community Benefit) Act 2000	Operations, conduct	Act revised the *Gaming No. 2 Act 1997*. Gatekeeper provisions apply.	New legislation. Protects minors and reduces market power of bingo venues, to enhance charitable and community organisations' fundraising abilities.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Club Keno Act 1993*	Rules, conduct	Review was completed in 1997, but report has not been released. Review is under consideration by Government.		Council to finalise assessment in 2003.
	Interactive Gaming (Player Protection) Act 1999	Conduct, operations, licensing	Gatekeeper provisions apply.	New legislation was accepted. It provides for the protection of consumers by regulating the provision of interactive gaming services.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gaming and Betting Act 1994* as it relates to betting *Racing Act 1958* *Lotteries Gaming and Betting Act 1966* *Casino Control Act 1991,* part 5A	Licensing, legislated monopoly, market conduct, operations, funding for the racing industry	Review was completed in 1998. It recommended the expansion of sports betting and found a public benefit argument for retaining monopoly and funding arrangements.	The Government response was released in August 2000. The Government supported recommendations on other codes of racing and proprietary racing, minimum phone bets, incorporation and partnerships, 24-hour internet race betting and tipping services. It rejected proposals on expanded sports betting other than issuing an additional football tipping competition licence. It noted reform of interstate advertising restrictions were best promoted at the national level and undertook to promote deregulation through the Australian Racing Ministers' Conference. *Racing and Betting Acts (Amendment) Act 2001* was enacted in May 2001. The Act deregulates mixed sports gatherings, including removing the prohibition on personnel licensed by the Victorian Racing Club and Harness Racing Victoria from competing at these meetings, and deregulates betting information services in accordance with the NCP review. The removal of restrictions on bookmakers' operating structure and hours of trading was accepted and the Government has agreed to the options agreed by the Government-industry working party.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gaming Machine Control Act 1991* *Gaming and Betting Act 1994* as it relates to a gaming operator's licence and relevant regulation	Licensing, ownership, number of machines	Review was completed in 2000. It recommended: • Ending current licences as soon as possible (noting that they expire in 2012); • Re-negotiating the Agreement Act be to ensure ongoing support for the racing industry, independent of the existing duopoly and financing arrangements; • Removing the licence requirement for monitoring and control; • Removing the restriction that at least 20 per cent of gaming machines be allocated to nonmetropolitan Victoria; • Retaining the 50:50 club:hotel split; • Implementing a package of measures to regulate quasi-clubs;	Review and Government response was released 18 July 2001. The Government accepted most of the review recommendations.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)			• Retaining venue limits on machine numbers; • Retaining 24-hour gaming restrictions; • Restricting gaming to licensed hotels and clubs; • retaining Ministerial ability to set betting limits; • retaining restriction on an operator having two venues within 100 kilometres of each other; • retaining existing probity restrictions; and • giving more explicit guidance to the Victorian Casino and Gaming Authority on its role and responsibilities.		

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Casino (Management Agreement) Act 1993* *Casino Control Act 1991*	Exclusive licence, conduct, operations	NCP review did not proceed because preliminary investigations indicated that the compensation required to remove the exclusive licence outweighs any benefits to be gained.		Meets CPA obligations (June 2002).
Queensland	*Jupiters Casino Agreement Act 1983* *Breakwater Island Casino Agreement Act 1984* *Brisbane Casino Agreement Act 1992* *Cairns Casino Agreement Act 1993*	Exclusive licences, conduct, operations	Review was completed in 1998.	Provisions were retained.	Meets CPA obligations (June 2002).
	Lotteries Act 1994	Exclusive licence	Review completed.	Statutory monopoly of Golden Casket Corporation was replaced with a limited-duration exclusive licence. Act was repealed and replaced with *Lotteries Act 1997*, which is to be reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001).
	Art Unions and Public Amusements Act 1992			Act was repealed and replaced with the *Charitable and Non-profit Gaming Act 1999*.	Meets CPA obligations (June 2001).

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Racing and Betting Act 1980* and associated rules and regulations (as they relate to the Queensland TAB)	Exclusive licence, market conduct, operations		Act was repealed and replaced by the new *Wagering Act 1998*, which is to be reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001).
	Racing and Betting Act 1980 and associated rules and regulations (as they relate to bookmakers and the Queensland racing industry)	Licensing, market conduct, operations	Review was completed in 2000. Government endorsed review recommendations in November 2000.	A Bill to enact recommendations, including removing the majority of nonprobity-based restrictions on bookmakers (particularly those relating to minimum phone betting, betting type and recording of betting) is to be introduced in 2002.	Council to finalise assessment in 2003.
	Keno Act 1996 *Casino Control Act 1982* *Gaming Machine Act 1991* *Wagering Act 1998* *Interactive Gambling (Player Protection) Act 1998* *Charitable and Non-profit Gambling Act 1999* *Gaming Legislation Amendment Bill* *Lotteries Act 1997*	Exclusive licences, other licences, market conduct, operations, rules	Omnibus public benefit test review is under way.		Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Instant lottery and lotto rules *Lotteries Commission Act 1990*	Market conduct, operations, licensing	Review completed. It recommended retaining restrictions.	The Government is considering its response.	Council to finalise assessment in 2003.
	Betting Control Act 1954 *Totalisator Agency Board Betting Act 1960*	Market conduct, operations, licensing	Review was completed in 1998.	Betting Legislation Amendment Bill 2001 and the Acts Amendment and Repeal (Competition Policy) Bill will implement a number of the review recommendations. These include: • relaxing restrictions on the operation of totalisators other than by the Totalisator Agency Board; • relaxing restrictions on bookmakers and their operations; • removing limits on bets in the regulations, leaving the racing clubs to set limits as they see fit; and • relaxing some restrictions on the operations of the Totalisator Agency Board.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Racing Restrictions Act 1917*	Licensing, differential treatment	Review was completed in 1998 It recommended that: • the Act provisions that establish centralised control of horse racing are in the public interest and should be retained; • s. 2(1) of the Act should be amended to limit the authority of the Western Australian Turf Club to thoroughbred racing; • a provision should be inserted to allow the licensing by the Minister (or other authority) of alternative forms of horse racing where such action can be demonstrated to be in the public interest; • the establishment of a single independent regulator should be considered if it is demonstrated that the Western Australian Turf Club has improperly used its power as controlling authority to favour its own club activities over other clubs under its control;	Legislation is to be amended through the Acts Amendment and Repeal (Competition Policy) Bill 2002.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)			• the provisions contained in s. 3(1) of the Act that establish centralised control of trotting and vest control in the Western Australian Trotting Association are in the public interest and should be retained; • the provisions applying where the Western Australian Turf Club or the Western Australian Trotting Association proposes to make a change in the program of race meetings customarily held in the metropolitan area, and this change may necessitate a reduction or change in the program of races customarily held outside the metropolitan area be retained and any dispute arising in relation to the matter may be referred to the Minister and the Minister may give such directions to the WATC or WATA as the Minister thinks fit (ss. 2(2) and 3(2)); and		

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Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)			• with the removal of the restriction on the number of permissible race meetings and the abolition of oncourse betting taxes, the restriction on holding a limited number of race meetings in aid of any public hospital or other charitable or patriotic purpose is no longer relevant and should be repealed.		
	Racing Restrictions Act 1927	Conduct	Review was completed in 1999.	Act is to be repealed by the Acts Amendment and Repeal (Competition Policy) Bill.	Council to finalise assessment in 2003.
	Casino (Burswood Island) Agreement Act 1985 Casino Control (Burswood Island)(Licensing of Employees) Regulations 1985 *Casino Control Act 1984*	Licensing, market conduct, operations	Review was completed in 1998.	Exclusive licence has expired and not been renewed. Other barriers to entry that are not in the public interest have been removed. The Government is negotiating with the casino operator on remaining exclusivity provisions.	Council to finalise assessment in 2003.

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Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Gaming Commission Act 1987*	Licensing, market conduct, operations	Review was completed in 1998. It recommended no change to most restrictions, including licensing and the availability of gaming machines. It recommended removing restrictions on casino games for community gaming, two-up and bingo prize pools, subject to necessary changes being negotiated in the Casino (Burswood Island) Agreement Act. It recommended removing or reducing lotteries restrictions, including: allowing for the licensing of suppliers of State lottery products by State agreement; making lawful the lotteries conducted by organisations the subject of such an agreement; allowing for licensing of professional fundraisers; removing the definition of 'foreign lottery' from the legislation; and making related amendments.	Government considering full response, amendments will affect *Lotteries Commission Act 1990*.	Council to finalise assessment in 2003.
	Western Australian Greyhound Racing Association Act 1981	Registration, conduct	Review completed. It recommended repealing provisions that limit the number of meetings that the Western Australian Greyhound Racing Authority may hold.	Acts Amendment and Repeal (Competition Policy) Bill is before Parliament to enact the review recommendations.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Casino Act 1997* *Lottery and Gaming Act 1936* *State Lotteries Act 1966* *Gaming Machines Act 1992* *Gaming Supervisory Authority Act 1995* *Authorised Betting Operations Act 2000* *TAB Disposal Act 2000*	Exclusive licences, operations, barrier to entry, licensing, market conduct	Omnibus review is under way. All gambling legislation, including Bills before the Parliament, are to be reviewed.		Council to finalise assessment in 2003.
	Racing Act 1976	Barrier to entry, market conduct	Review was completed in 2000.	Act has been repealed.	Meets CPA obligations (June 2002).
Tasmania	*Tasmanian Harness Racing Board Act 1976*	Registration, conduct	Review completed.	Act was repealed and replaced by the *Racing Amendment Act 1997*.	Meets CPA obligations (June 2001).
	Casino Company Control Act 1973	Ownership	Minor review completed.	Act was repealed.	Meets CPA obligations (June 2001).
	Racing and Gaming Act 1952 (as it relates to minor gaming)	Licensing, conduct, operations	Minor review completed.	Gaming components of this Act are to be transferred to the *Gaming Control Act 1993* and assessed under gatekeeper requirement.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Racing Act 1983* *Racing and Gaming Act 1952* (except as it relates to minor gaming) which has been replaced by the *Racing Regulation Act 1952*	Licensing, conduct, operations	Review completed.	New racing legislation is being drafted following the restructure of the racing industry in 2000. The new legislation will be assessed under the gatekeeper provisions.	Council to finalise assessment in 2003.
	Gaming Control Act 1993	Exclusive rights, conduct and operations	Review completed. It recommended retaining restrictions.	The Government agreed with the recommendations. Recent amendments to the Act removed Tattersall's exclusive lottery licence in Tasmania from 2002 and further amendments will permit the sale of other lottery tickets.	The decisions on lotteries meet CPA obligations (June 2002). Council to finalise assessment of other matters in 2003.
	TT-Line Gaming Act 1993	Licensing, market conduct, operations	Review completed. It recommended retaining restrictions.	The Government accepted the recommendations.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Betting (ACTTAB Limited) Act 1964* *Betting (Corporatisation) (Consequential Provisions) Act 1996* *Bookmakers Act 1985*		Review was completed in 1999.	The Government is implementing reforms including: removing the requirement for racing club approval before granting bookmakers' licences; removing racing club-specific restrictions on bookmakers' licences; allowing an independent authority (the ACT Gambling and Racing Commission) to assess licence applications; removing limitations on phone betting limits; removing the requirement for sports bookmakers licence-holders (or agents licence-holders) to first obtain a standing bookmaker's licence; removing the limit on the number of sports betting licences granted; allowing flexibility in the locations where betting offices can operate; and relating the size of the betting security guarantee to the amount of risk.	Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Casino Control Act 1988* *Gaming Machine Act 1987* *Games Wagers and Betting-houses Act 1901* *Gaming and Betting Act 1906* *Lotteries Act 1964* *Pool Betting Act 1964* *Unlawful Games Act 1984*	Licensing, conduct, operations	Review was completed in 1998. It recommended no change to the *Games Wagers and Betting-houses Act 1901,* the *Gaming and Betting Act 1906,* the *Lotteries Act 1964,* the *Pool Betting Act 1964 and* the *Unlawful Games Act 1984.* A Select Committee of the Legislative Assembly further examined the social and economic impacts of gambling undertaken by. The committee did not consider all the recommendations of the original review. The *Gaming Machine Act 1987* is subject to a separate review by the ACT Gaming and Racing Commission. That review is due for completion mid-2002.	The Government decided not to extend the life of the casino licence beyond the current period. Gaming machines are not allowed in the casino. In-principle support was given for removing restrictions on the types of gaming machines permitted in hotels.	Council to finalise assessment in 2003.
	Racecourses Act 1935 *Racing Act 1999*	Approvals, conduct, licensing	Review was not required for the Racecourses Act. Gatekeeper provisions applied to the Racing Act.	*Racecourses Act 1935* was repealed and in part replaced by the *Racing Act 1999*. The new legislation assessed under the gatekeeper provisions of clause 5(5).	Meets CPA obligations (June 2002).
Northern Territory	*Gaming Control Act* and regulations *Gaming Machine Act* and Regulations	Licensing, operations, conduct	Review is under way.		Council to finalise assessment in 2003.

(*continued*)

Table 12.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Racing and Betting Act* and Regulations *Unlawful Betting Act* and Regulations	Licensing and registration	Review is under way.		Council to finalise assessment in 2003.
	Totalisator Administration and Betting Act	Exclusive licence	Review was not required.	Act was repealed and replaced with the *Totalisator Licensing and Regulation Act* and the *Sale of NT TAB Act*.	Meets CPA obligations (June 2001).
	Totalisator Licensing and Regulation Act *Sale of NT TAB Act*		Review was completed in 2001.	The Government approved the review recommendations in February 2002.	Council to finalise assessment in 2003.