1 Primary industries

This chapter assesses governments' fulfilment of their Competition Principles Agreement (CPA) obligations in relation to:

- agricultural commodities;
- fisheries;
- forestry;
- agriculture-related products and services; and
- mining.

The review and reform of anticompetitive regulation (CPA clause 5) dominates National Competition Policy (NCP) activity in these areas. Also important is the application of competitive neutrality (CPA clause 3) in forestry and structural reform (CPA clause 4) in sugar marketing.

Agricultural commodities

This section assesses Governments' compliance with the CPA obligation to review and reform the regulation of the production and marketing of the following commodities:

- grains;
- dairy;
- eggs;
- poultry meat; and
- other commodities regulated by single jurisdictions — dried fruit, rice, sugar and potatoes.

Governments have a long history of involvement in the marketing of agricultural products. The Productivity Commission recently reviewed this history (PC 2000e). Farmers began to voluntarily form State or regional cooperatives at the turn of the twentieth century. Following World War I, agricultural product prices boomed and then collapsed, prompting State governments to legislate compulsory membership of, formerly voluntary, co-operatives. Following World War II, when a similar price collapse was feared, farmers embraced national statutory price stabilisation and marketing arrangements. These arrangements guaranteed average returns via Commonwealth Government underwriting of export receipts and domestic price setting. In the 1970s and 1980s, in response to growing evidence of production inefficiencies and costs to taxpayers and domestic consumers, the Commonwealth Government reformed and, in some cases, phased out these schemes. Statutory marketing authorities, commonly referred to as 'single desks', nevertheless remain for some key agricultural products. Table 1.1 sets out the principal agricultural activities with single desks at the time governments introduced the NCP.

Table 1.1: Key agricultural commodities with statutory marketing arrangements, 1995

Product	*Jurisdiction(s)*
Dairy	Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia, Tasmania and the ACT
Dried fruit	Commonwealth
Eggs	Queensland, Western Australia and Tasmania
Grains	Commonwealth, New South Wales, Victoria, Queensland, Western Australia, South Australia and the Northern Territory
Potatoes	Western Australia
Poultry meat	New South Wales, Victoria, Queensland, Western Australia and South Australia
Rice	New South Wales
Sugar	Queensland

Legislative restrictions on competition

Jurisdictions have restricted competition in markets for agricultural commodities in two principal ways. First, legislation may restrict entry by traders and processors. In some cases, only one entity (usually a grower-controlled marketing authority) can acquire produce from growers. Often the enabling legislation vests ownership of the produce in the marketing authority upon harvest, in exchange for a grower entitlement to share in the net proceeds from the marketing authority's sale of the commodity. Examples of this include:

- the existing regulation of rice marketing in New South Wales, which prohibits growers from selling their produce to anyone other than the Rice Marketing Board; and

- the former regulation of milk supply in all States and the ACT, which vested ownership of milk in statutory industry authorities.

In other cases, the restriction on entry is partial or conditional. Most remaining grain marketing regulation, for example, allows competitive entry to the market for on-selling to domestic consumers or processors, or the market for exporting in small quantities. In the chicken meat industry, entry into the processing market in Western Australia requires approval by the Minister for Agriculture.

Second, legislation may provide for direct controls on price or production of an agricultural commodity. New South Wales, Queensland and Western Australia controlled the production of milk for fresh consumption through milk quotas. In Queensland, grower representatives bargain with the local cane mill operator to determine the price received by sugarcane growers and the land area available to grow sugar cane.

A common feature of these arrangements is that they require individual growers to give up a considerable degree of choice in how they operate their business, what they produce and how they market their production. In return, growers expect to benefit from earning a higher net income over the long term.

Regulating in the public interest

The Productivity Commission argued that a case for restricting competition in export marketing exists where:

- a country's demand for imports from Australia is relatively insensitive to price, supply from competing sources is constrained, and there are limited substitute products; or

- a country imposes a quota on imports of the product(s) from Australia (PC 2000d, p. XV).

In either of these circumstances, restricting competition between rival Australian exporters is expected to raise national income received from the particular export market. This will be in the overall public interest so long as income forgone in other export markets and any productivity losses in Australia do not exceed this additional income. Productivity losses may arise through pooling — which may increase domestic prices, reduce rewards for quality and innovation, and foster inefficient logistical arrangements — and reduced risk-spreading opportunities for producers and competing domestic marketers.

Any net benefit from restricting competition in export marketing should be maximised by allowing competition in:

- those export markets that do not clearly match the above circumstances; and
- Australia's domestic markets (that is, markets for the product, substitutes, intermediate goods, associated services and factor markets) as much as possible.

The Commission notes that this is more likely to be achieved through export licensing or export taxes than through maintaining a conventional single desk.

Restricting competition in domestic marketing may be in the public interest where it would achieve benefits such as:

- allowing consumers to make informed product choices;
- supporting consumer confidence in product safety;
- promoting equitable dealing with small businesses; and
- assisting small businesses to become more efficient;

and where costs (such as increased prices or reduced product quality) do not exceed the value of these benefits.

Grain

Grain is by far the most important agricultural commodity produced in Australia. In 2001-02 A$5766 million of wheat, A$2984 million of oilseeds (such as canola, cottonseed, linseed and soybeans) and A$2362 million of coarse grains (barley, oats, sorghum and maize) were produced. Most grain is exported – grain exports in 2001-02 were A$7201 million (ABARE 2003).

For many years, the Commonwealth Government and most States and Territories maintained grain marketing authorities with an exclusive right within their jurisdiction to acquire prescribed grains and to sell in domestic and/or export markets (table 1.2). The central aim of these statutory grain marketing monopolies was to establish market power and thereby raise prices received for the regulated commodities.

As well as their own grain marketing monopolies, most States also had legislation importing the Commonwealth *Wheat Marketing Act 1989* into State jurisdiction. This State legislation generally has no significant practical restrictive effect beyond the Commonwealth Act, so is not a priority competition matter.

Table 1.2: Grain marketing restrictions before NCP review and reform

Jurisdiction	*Legislation*	*Marketing board*	*Domestic*	*Export*
Commonwealth	*Wheat Marketing Act 1989*	Australian Wheat Board		Wheat
New South Wales	*Grain Marketing Act 1991*	NSW Grains Board	Barley Sorghum Oats Canola Safflower Sunflower Linseed Soybeans	Barley Sorghum Oats Canola Safflower Sunflower Linseed Soybeans
Victoria	*Barley Marketing Act 1993*	Australian Barley Board	Barley	Barley
Queensland	*Grain Industry (Restructuring) Act 1993*	Grainco Australia Limited	Barley Sorghum	Barley Sorghum
Western Australia	*Grain Marketing Act 1975*	Grain Pool of Western Australia		Barley Canola Lupins
South Australia	*Barley Marketing Act 1993*	Australian Barley Board	Barley Oats	Barley Oats
Northern Territory	*Grain Marketing Act 1983*	NT Grain Marketing Board	Various	Various

Much changed in the eight years from the signing of the CPA. Victoria, Queensland and the Northern Territory removed all their restrictions on grain marketing. New South Wales removed all marketing restrictions from some grains and the remainder sunset on 30 September 2005. Western Australia allows competitive grain marketing except to those export markets where restricting access is shown to earn a significant premium. South Australia may adopt reforms similar to those in Western Australia. The Commonwealth Government allows limited wheat exports that do not compete with those of AWB Limited.

Table 1.3 summarises government's progress in reviewing and reforming grain marketing legislation.

Commonwealth

The Commonwealth's Wheat Marketing Act prohibited the export of wheat by anyone other than the Australian Wheat Board without the board's consent. In addition, the Act guaranteed the board's borrowings until July 1999 and provided for the accumulation of the Wheat Industry Fund to eventually replace the statutory guarantee.

In 1997 and 1998, the Commonwealth Government amended the Act to facilitate the establishment of a grower-owned and -controlled company, AWB Limited, and its export pool subsidiary, AWB International Limited (AWBI), to assume responsibility for wheat marketing and financing from July 1999. The amendments also:

- established the Wheat Export Authority (WEA) to control the export of wheat and to report to the Minister before the end of 2004 on the performance and conduct of AWBI;
- conferred on AWBI the power to export wheat without the WEA's consent; and
- exempted anything done by the AWBI in exporting wheat from part IV of the Trade Practices Act 1974 (TPA).

The power of the WEA to control the export of wheat is constrained. The amended Act requires the WEA to consult AWBI before consenting to the export of wheat; for proposed exports in bulk, the WEA cannot consent without AWBI's approval.

Review and reform activity

In early 2000, the Commonwealth Government commissioned a three-member committee to review the Act against CPA clauses 4 and 5 and other policy principles. The committee received some 3000 submissions and conducted consultations throughout the country and overseas. It released a draft report for comment in mid-October 2000 and the Commonwealth Minister for Agriculture released the final report on 22 December 2000.

In relation to the CPA clause 5, the committee argued that introducing more competition was more likely than continuing the export controls to deliver greater net benefits to growers and the wider community (Irving et al. 2000). It found that:

- any price premiums earned by virtue of the single desk are likely to be small (estimated at around US$1 per tonne in the period 1997–99);
- the single desk is inhibiting innovation in marketing; and
- the single desk is impeding cost savings in the grain supply chain.

Estimates of the economic impact of the single desk arrangements ranged from a gain of A$71 million per year to a loss of A$233 million.

The committee felt, however, that it would be premature to repeal the Act without a further, relatively short evaluation period. The committee was concerned that the estimation of benefits and costs is complex, and that some uncertainty remained. It also believed 'that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable

net benefits than was evident during this review' (Irving et al. 2000, p. 7). The committee therefore recommended that:

- the Commonwealth retain the single desk until the 2004 review required by the Act;
- the 2004 review incorporate NCP principles and be the final opportunity to show a net community benefit from the arrangements; and
- the Commonwealth Government convene a joint industry/government forum to develop performance indicators for the 2004 review.

The committee also recommended that the WEA trial for the three years until the 2004 review a simplified export control system whereby it licenses exporters annually. It believed that the freight rate differential between bulk exports and exports in containers and bags provided a high degree of protection for bulk exports by AWBI to all markets except Japan, and that opening up the export of wheat in containers and bags would allow highly desirable innovation in the discovery, development and expansion of markets for wheat exports.

In relation to the CPA clause 4 structural reform obligation, the committee found that the Act does not clearly separate the regulatory and commercial functions of the former Australian Wheat Board. It recommended that the Commonwealth amend the Act to:

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

The Commonwealth Government responded on 4 April 2001, stating that it would retain the single desk but would not conduct the 2004 review under NCP principles. The Minister argued that the latter decision is necessary to avoid further uncertainty in the industry and for wheat growers.

The Commonwealth Government also declined to amend the Act to ensure the independence of the WEA, particularly in relation to the export consent arrangements. It argued that removing AWBI's role in these arrangements would have significantly changed the balance between the operations of the WEA and AWBI, which might have affected the AWB's then proposed listing on the Australian Stock Exchange.

The Commonwealth Government agreed to the development of rigorous and transparent performance indicators to ensure the 2004 review accurately measures the benefits to industry and the community. A working group — comprising the WEA, the AWBI, the Department of Agriculture, Fisheries

and Forestry, and the Grains Council of Australia — was formed to develop the performance measurement framework, taking into account the views of the other industry representatives. The authority released the framework on 4 September 2001; it has since reported annually on its monitoring results to the Minister for Agriculture and the Grains Council of Australia, and released a summary report to the public.

The Commonwealth Government also agreed to improve the export consent system based on the licensing arrangements proposed in the review. The working group prepared the proposed changes, which the WEA announced on 28 September 2001. The changes included clearer consent criteria, a quarterly application cycle, a 12-month consent for shipments to niche markets and a three-month consent for other shipments.

In June 2003, following an inquiry by the Senate Rural and Regional Affairs and Transport Legislation Committee, the Parliament passed amendments to the Act that provided for:

- funding the WEA until June 2006 from a levy on the export of wheat;
- clarifying that the role of the WEA in administering export consents is to complement the objective of AWBI in maximising net pool returns, while facilitating the development of niche and other markets for the benefit of growers and the wider community;
- clarifying the ability of the WEA to vary the terms of export consents; and
- establishing an independent panel to conduct the 2004 statutory review with assistance from the WEA.

Assessment

The Council assessed in 2002 that the Commonwealth Government had not met its CPA clause 4 and 5 obligations arising from the Wheat Marketing Act. It is satisfied that the Government's review of the Wheat Marketing Act was open, independent and rigorous. The review involved extensive public consultation, the review committee was generally accepted as capable of undertaking an independent and objective assessment of all relevant matters, and the recommendations were well grounded in the available evidence. The review did not show that retaining the wheat export single desk is in the public interest; rather, as noted above, it found that allowing competition is more likely to be of net benefit to the community.

The wheat export single desk will be subject to review again — this time by an independent panel — in 2004. Nevertheless, as repeatedly stated by the Minister for Agriculture (most recently in the media release on 27 June 2003), the 2004 review will not be an NCP review and will not consider the continuation of the single desk. The Council therefore confirms its conclusion that the Commonwealth has not met its CPA clause 5 obligation relating to the regulation of wheat export marketing.

For now, the WEA's export consent arrangements will govern the degree of competition in the export of Australian wheat. The Council is concerned that the revised arrangements are substantially more restrictive than the regime recommended by the 2000 review. Contrary to the 2000 review's recommendation, the revised arrangements do not grant a licence to export subject to certain conditions (such as destination, shipment method and reporting). Rather, the WEA requires exporters to obtain its consent for individual export shipments, although it now allows exporters to make one application covering multiple proposed shipments. Thus, an exporter holding a 12-month 'niche market' consent (principally for bagged/packaged wheat) is permitted to export only the shipments specified in the consent application, which must be submitted two months before the consent period begins. Exporters must make further applications for any other proposed shipments. This imposes a significant compliance burden on exporters and hampers their ability to pursue export opportunities that arise at short notice, and to meet changes in customer requirements.

In addition, the guidelines on the revised arrangements leave considerable uncertainty for exporters about whether a proposed shipment will be granted consent and for what volume. In determining the eligibility of an exporter, the WEA is to consider 'Australia's reputation in overseas markets as a reliable supplier of wheat' and to assess 'the exporter's history in international commodity trade, especially in the export of wheat and grain from Australia', and 'any other relevant matter' (WEA 2001). The WEA thus appears to have a wide scope for discretion. Moreover, protecting Australia's reputation is not an objective or function specified in the Act, the 2000 review or the Commonwealth Government response on 4 April 2001.

The Commonwealth Office of Regulation Review reported in November 2001 that the regulation impact statement prepared for the revised export consent guidelines was inadequate (PC 2001a).

In relation to CPA clause 4, while the Commonwealth has now undertaken the review that it was obliged to do before privatising the the former Australian Wheat Board, it has not addressed the 2000 review committee's recommendations to amend the Act to ensure the independence of the WEA, particularly its role in controlling exports. In the Council's view, it is not sufficient to argue that this would have significantly changed the balance between the operations of the WEA and AWBI, and might have affected the AWB Limited's then proposed listing on the Australian Stock Exchange. This argument underlines the Commonwealth Government's failure to conduct a CPA clause 4 review before privatising the former Australian Wheat Board. The Council therefore finds that the Commonwealth Government has not met its CPA clause 4 obligations.

New South Wales

The *Grain Marketing Act 1991* vested ownership of all barley, sorghum, oats, canola, safflower, sunflower, linseed and soybeans grown in New South Wales in the New South Wales Grains Board.

Review and reform activity

In 1998, the New South Wales Government commissioned a review of the Act by a review group composed of four Government representatives and four industry representatives. The review group reported to the Government in July 1999. A majority of the review group recommended:

- removing restrictions on competitive domestic marketing by no later than 31 August 2001 for malting barley and no later than 31 August 2000 for all other grains;
- removing restrictions on competitive export marketing except for sales of feed and malting barley to Japan and sales of malting barley to China (or for all export sales of feed and malting barley if discriminating between countries proves to be impractical); and
- further reviewing retained restrictions by August 2004.

Subsequently, the solvency of the Grains Board came under mounting speculation. On 16 August 2000, the then Minister for Agriculture announced that the board would retain its vesting powers for another five years and that the New South Wales Government would help it restructure its financial and trading arrangements (Amery 2000a).

The Grains Board nevertheless collapsed in September 2000, leaving growers preparing for harvest without a buyer. On 26 October 2000, the Minister announced that:

> *Grainco Australia Limited will act as the sole agent for the NSW Grains Board on future trading and marketing of export barley, canola and sorghum, and domestic malting barley …*
>
> *… this agency agreement will operate within the framework of the NSW Grain Marketing Act until 2005.*
>
> *Grainco Australia was the most favourable of the four tenderers to act as the Board's agent and the agreement ensures that all outstanding payments to growers will be met.* (Amery 2000b).

Grainco bid A$25.2 million for the right that it exercises under a Deed with the Government and the Administrator of the Grains Board. Soon after, all restrictions on the marketing of sunflower, safflower, linseed and soybeans, and domestic marketing restrictions for feed barley, canola and sorghum were removed administratively.

The *Grain Marketing Amendment Act 2001* formalised the removal of these restrictions and set down 30 September 2005 for the expiry of all remaining restrictions (that is, restrictions on domestic marketing of malting barley and export marketing of feed barley, malting barley, sorghum and canola). The Council understands that no further review is planned.

Assessment

The Council assessed in 2002 that the New South Wales Government had not met its CPA clause 5 obligations arising from the Grain Marketing Act. The only restrictions that the 1999 review found to be in the public interest were those on the marketing of feed and malting barley to Japan and malting barley to China. The evidence presented to support these restrictions was inadequate, however.

- The premium prices observed in the Japanese market, and thought to possibly exist in the Chinese market, were not shown to result either solely or in part from the Grains Board's exercise of market power. Other possible explanations, such as high product quality, service or supply reliability, were not disproven.

- Econometric analysis by the Department of Agriculture showed that the Grains Board had imposed a small net public cost by raising domestic prices for malting barley above export prices.

As agreed by the Council of Australian Governments (CoAG) in November 2000, the temporary retention of competition restrictions beyond June 2002 is compliant with the CPA clause 5, so long as it is under a firm transitional arrangement and justified by a public interest assessment.

In its 2002 NCP annual report, the New South Wales Government presented evidence for the temporary retention of restrictions.

- The sudden insolvency of the Grains Board had the potential to undermine the State's entire coarse grain industry.

- Introducing arrangements that were substantially different from the existing legislative framework would have imposed significant delays when the government needed to act quickly.

It did not show, however, why other marketers could not have quickly moved to fill the gap left by the Grains Board. The same provisions of the Act under which Grainco was authorised to act as the board's agent could have been used to authorise many marketers. Similarly, many marketers could have collected the levy collected by Grainco to recoup payments made to growers for money owed from the 1999-2000 pools.

New South Wales reported in its 2003 NCP annual report that bringing forward the expiry of the remaining restrictions from 30 September 2005 is not possible because the restrictions are the subject of a court-ordered Scheme

of Arrangement and binding Deeds of Agreement between Grainco Australia, the Administrator of the Grains Board and the New South Wales Government.

Nevertheless, the Government presented no new evidence that its original decision to retain these restrictions was in the public interest. The Council therefore confirms its previous assessment that New South Wales has not satisfactorily fulfilled its CPA clause 5 obligations arising from the Grain Marketing Act.

Victoria

The Victorian *Barley Marketing Act 1993*, jointly with the South Australian Act, prohibited the sale or delivery of barley grown in either State to anyone other than the Australian Barley Board.

Review and reform activity

In 1997, the State governments of Victoria and South Australia commissioned an independent review of the Acts by the Centre for International Economics. Accounting for uncertainty about price sensitivities, the review found that the Australian Barley Board had only a 36 per cent chance of earning a premium in export feed barley markets by attempting to price discriminate. It found that any potential for a premium arose solely in the Japanese market. It considered, however, that even if a premium were available, the Australian Barley Board would not need single desk powers to capture it.

Victoria accepted the review recommendations to:

- remove the domestic barley marketing monopoly;
- retain the export barley marketing monopoly for only the 'shortest possible transition period'; and
- restructure the Australian Barley Board as a private grower-owned company.

By mid-1999, the domestic marketing monopoly was removed and the Australian Barley Board was transferred to grower ownership as ABB Grain Limited. Victoria passed legislation sunsetting ABB Grain Limited's export monopoly over barley from July 2001.

The new State Government reconsidered the sunsetting of the barley export monopoly and, on 15 December 2000, confirmed that Victoria's barley export monopoly would cease on 30 June 2001. Victorian barley growers have since had unrestricted choice as to whom they sell their barley.

There has been no comprehensive evaluation of the impact of deregulation on Victorian barley growers and the wider community. There is considerable

anecdotal evidence of benefits, however. Prices offered to barley growers in Victoria have generally exceeded those in New South Wales and South Australia, reportedly prompting some growers in those States to truck their grain to Victorian storages (although debate remains about the extent to which deregulation is responsible, versus other factors such as local shortages and freight cost changes). Victorian growers have certainly enjoyed many more risk management options, with a variety of forward cash offers available in addition to traditional pools, allowing growers to better align marketing risk with their cropping programs and individual preferences. Deregulation has also been associated with investment in new, more efficient storage and handling facilities in regional areas.

Assessment

As the Council reported in its 2001 NCP assessment, the reform and subsequent sunsetting of the Barley Marketing Act on 30 June 2001 meant that Victoria has met its CPA clause 5 obligation in this area.

Queensland

Queensland's *Grain Industry (Restructuring) Act 1993* vested ownership in Grainco of all barley and wheat grown in the State.

Review and reform activity

In 1997, the Government of Queensland submitted the Act to review by a panel of industry and Government representatives, including one from Grainco. The Government accepted the review recommendations to remove the domestic market restrictions and to extend the export market restrictions until at least mid-2002. The Act was amended so the vesting of ownership of barley (and wheat) in Grainco did not apply to grain harvested after 30 June 2002. Consequently, Queensland barley growers have not been restricted in their choice of buyer for grain harvested since that date.

Assessment

In 2002 the Council assessed Queensland as having met its CPA clause 5 obligation relating to the Grain Industry (Restructuring) Act.

Western Australia

The *Grain Marketing Act 1975* prohibited anyone other than the Grain Pool of Western Australia from exporting barley, canola and lupins grown in the State.

Review and reform activity

In 1999, the then Western Australian Government initiated a review of the Act by the Department of Agriculture. A draft report released later that year recommended that the Government retain the coarse grain export marketing monopoly held by the Grain Pool pending the Commonwealth removal of the AWBI's wheat export marketing powers. The State Government deferred a decision in light of criticisms of the draft report's analysis.

The new Government returned the Act to review by the department. On 12 April 2002, the department released a discussion paper, which noted that:

- various studies of grain marketing show that it is difficult to conclusively identify premiums from the exercise of market power; but
- in the case of the Grain Pool, any such premiums that exist are likely to be small.

The department concluded that removing the grain export monopoly would not be in the best interests of the Western Australian grain industry, however, because growers' investment in the Grain Pool would be threatened if the AWBI was able to compete in the coarse grain market while enjoying a near-monopoly in the wheat market, and because growers would be at an information disadvantage in open markets. The department instead proposed that the State Government establish a Grain Licensing Authority, which would:

- license a privatised Grain Pool to export bulk barley, lupins and canola; and
- grant permits for the bulk export of value-added grain products and for bulk grain exports not in competition with those of the Grain Pool.

In addition, export of grains in bags and small containers would be unrestricted, formalising current practice.

On 14 August 2002, the Council and the State Government reached an understanding on arrangements for the future regulation of grain export marketing in Western Australia.

- The State Government would immediately legislate to remove the bulk grain export marketing monopoly once the Commonwealth Government removed the bulk wheat export marketing monopoly.
- In the interim, the legislation would not restrict the export of grain in bags and shipping containers, and the State Government would establish a Grain Licensing Authority to license exports of grain in bulk by parties other than the Grain Pool.
- Consistent with the Government's support for removing restrictions on export marketing, the authority would:

  - be predisposed to grant export licences to parties other than the Grain Pool unless satisfied that this would significantly impact on a price premium arising from the market power of the single desk (but not on premiums arising from other factors such as grain quality that are available to all licence holders);

  - consult the Grain Pool when considering granting export licences for exports to markets in which a demonstrated price premium arises from the market power of the single export desk, but the Grain Pool would have no power of veto;

  - not be required to consult the Grain Pool for proposed exports to other markets; and

  - be permitted to grant export licences for a specified period rather than on a case basis.

- The Authority will obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power of the single desk.

- To consider the overall interests of the community, the majority of the authority's membership would be independent of growers and would include one official of the Department of Treasury and Finance. The two grower representatives would be selected to ensure a broad scope of grower opinion is available to the authority.

Subsequently, the Government introduced the Grain Marketing Bill 2002 to Parliament. Passed into law in November 2002, the legislation:

- prohibits the bulk export of barley, canola and lupins unless under licence (section 24);

- gives the main export licence to the Grain Pool – now a subsidiary of the grower-owned Cooperative Bulk Handling Ltd (section 27);

- establishes the Grain Licensing Authority, comprising a chair, two grower representatives, an official of the Department of Agriculture and an official of the Department of Treasury and Finance (section 6);

- provides for the authority to grant special export licences (with effect from November 2003 or later) to persons other than the main export licence holder, provided that the authority first consults the main export licence holder if the proposed export is to a market in which the licence holder earns a price premium from the exercise of market power, and that the authority will not grant a special export licence if it considers that the export would significantly reduce the price premium (section 29 to 34);

- exempts from the TPA the main export licence holder's export of grain, and related conduct (section 41); and

- provides for the Minister to set an expiry date for the Act if the Commonwealth Government removes restrictions on the export of wheat (section 49).

Exports of barley, canola and lupins in bags and containers are unrestricted.

The Minister announced the appointments to the authority on 20 May 2003. The Minister has undertaken to consult the Council in developing regulations and Ministerial guidelines for the authority.

Assessment

The Council assessed in 2002 that Western Australia had met its CPA clause 5 obligations arising from the Grain Marketing Act, subject to the arrangements under the new legislation fulfilling the understanding reached between the Government and the Council.

The *Grain Marketing Act 2002* is consistent with the understanding reached in August 2002. At the time of reporting, however, the arrangements under the legislation (including Regulations and Ministerial guidelines) still had to be finalised. These arrangements are central to ensuring that the Authority will:

- be predisposed to grant export licences to parties other than the Grain Pool unless satisfied that this would have a significant impact on a price premium arising from the market power of the single desk; and

- obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power of the single desk.

The Council therefore assesses that review and reform of grain marketing arrangements in Western Australia is incomplete and, hence, that the Government is still to fulfil its obligations under CPA clause 5.

South Australia

The South Australian *Barley Marketing Act 1993* and the Victorian Act prohibited the sale or delivery of barley grown in either State to anyone other than the Australian Barley Board. The South Australian Act also prohibited competition in the acquisition of oats grown in that State.

Review and reform activity

The independent review jointly commissioned with Victoria recommended that the South Australian Government:

- remove the domestic barley marketing monopoly and the oats marketing monopoly;

- retain the export barley marketing monopoly for only the 'shortest possible transition period';

- restructure the Australian Barley Board as a private grower-owned company.

By mid-1999, the domestic marketing monopoly was removed and the Australian Barley Board was transferred to grower ownership as ABB Grain Limited. South Australia passed legislation sunsetting ABB Grain Limited's export monopoly over barley from July 2001. However, following a finding by economic forecasters and advisers Econtech that the export barley marketing monopoly returned an A$15 million gain to the community (principally from exports to Japan), the State Government announced it would extend the monopoly indefinitely. The South Australian Parliament subsequently passed the *Barley Marketing (Miscellaneous) Amendment Act 2000* which removed the sunset clause but required a review of the export monopoly after two years.

On 6 November 2002, the Minister for Agriculture, Food and Fisheries initiated a new review into single desk export marketing of South Australian barley. The review was conducted by a three-member panel — led by Professor David Round of the University of South Australia, and included a former senior State Government official and the deputy chair of the Grains Council of South Australia — and charged with determining whether the single desk is clearly and credibly in the public interest. It was to undertake this task by:

- updating earlier studies by the Centre for International Economics and Econtech; and

- examining the Victorian experience of deregulation.

The review panel reported to the Minister on 18 June 2003. It noted that the resources made available to it by the Government had been insufficient to update the earlier studies, but that it had accepted an offer from ABB Grain Limited to fund modelling work by Econtech under the panel's direction. It also had obtained an independent review of Econtech's modelling by Professor MacAulay of Sydney University. The panel concluded:

> *… that the Econtech estimates have a high degree of uncertainty attached to them which cannot be quantified in any normal statistical sense, and the future net public benefit from the continued operation of the single desk, while not certain, is likely to be relatively small. When this is added to the absence of any comparative cost benchmarking of ABB, and the large number of non-quantifiable benefits and costs associated with the single desk, the Panel believes that the test established by clause 5 of the CPA has not been met in full — that is, it has not demonstrated to the Panel's satisfaction in any convincingly rigorous way that the single desk delivers benefits to the Australian community as a whole that outweighs the costs, and that the objectives*

> *of the legislation in granting single desk powers to ABB can only be achieved by restricting competition*. (Round et al. 2003, p. 73)

The panel recommended 'controlled deregulation' in which the single desk is exposed to competitive challenge through reform — along the lines of Western Australia's Grain Marketing Act — whereby ABB Grain Ltd would retain a principal barley export licence and, a year after the passage of reform legislation, an independent authority would license barley exports by other marketers that the authority determines do not threaten the price premiums that ABB Grain Ltd achieves as a result of its market power.

On 2 July 2003, the Minister announced the outcome of the review and the Government's in-principle approval of the recommendations. The Government is now seeking to agree with key industry players how the recommendations can be implemented. It intends to have a draft bill ready for the 2004 autumn session of Parliament.

Assessment

The Council assesses that South Australia has not met its CPA clause 5 obligations relating to the Barley Marketing Act. Restricting the export marketing of barley grown in South Australia has not been found to be in the public interest, and remains to be reformed.

The Council has given some consideration to the reform approach recommended by the review panel. This approach, characterised by the review panel as 'controlled deregulation', will nevertheless retain some degree of restriction of competition in barley export marketing for an indeterminate period. The panel argued that the alternative, 'instant' deregulation', would cause 'some massive adjustment problems and costs, especially in fragile rural communities, much the same as those caused by the across the board tariff cut instituted by the Whitlam Government in 1973' (Round et al. 2003, p. 78). The Council finds this claim difficult to accept. The Panel presented no analysis of the possible effects of deregulation on incomes in rural communities in South Australia. Further, it did not consider the experience of full deregulation of barley exporting in either Victoria or Queensland, which does not appear to have caused significant adjustment problems.

A careful and robust analysis of possible adjustment costs and risks would probably find that these can best be addressed by such measures as:

- announcing reform in clear and positive terms so that those affected know what will happen, why it will happen, and believe it will happen;
- setting an implementation timetable that gives those affected sufficient time to adjust without unduly delaying realisation of the benefits of reform; and

- assisting those who may have difficulty adjusting to improve their own capacity to operate successfully in the post-reform environment or to make alternative choices.

This reform approach, adopted by Victoria and Queensland, was not discussed in the review report.

Nevertheless, as the Government has decided to proceed with the panel's recommended reform approach, the Council highlights two matters that it considers to be critical to the success of this approach.

As acknowledged by the panel the recommended reform approach places a very large responsibility on the shoulders of the licensing authority. The licensing authority should grant export licence applications unless it is satisfied that to do so would significantly reduce price premiums convincingly demonstrated to result from the exercise of export market power. The principal licence holder must bear the burden of demonstrating the existence of such premiums and their sensitivity to competition from other exporters.

The panel did not discuss a key principle of the Western Australian reform approach — that the remaining restrictions expire upon the Commonwealth Government removing its remaining restrictions on the export of wheat. This principle recognises that the former state grain monopolies are likely to enter the wheat exporting market and that, at that point, removal of remaining state grain exporting restrictions is very unlikely to cause additional adjustment problems for growers. It also serves to underline that the end-point of deregulation is a fully competitive market for Australian grain.

Northern Territory

The Northern Territory's *Grain Marketing Act 1983* granted a monopoly to the Grain Marketing Board over domestic and export marketing of all barley and coarse grains grown in the Territory.

The Northern Territory Government completed an NCP review of the Act in 1997, which recommended repeal of the Act. Accordingly the Act was repealed later that year.

In 2001 the Council assessed that the Northern Territory had met its CPA clause 5 obligations arising from the Act.

Table 1.3: Review and reform of legislation regulating the marketing of grains

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Wheat Marketing Act 1989*	Prohibits the export of wheat except with consent of the WEA or by AWBI	Review was completed in 2000 by an independent review committee. It found that introducing competition was more likely to deliver net benefits than continuing the export controls, however, it would be premature to repeal the Act before a relatively short evaluation period of new commercial arrangements. It recommended: • retaining the export monopoly until the 2004 review; • incorporating NCP principles into the 2004 review; • developing performance indicators for the 2004 review; • moving from export consents to export licensing; • removing for a three-year trial the requirement that the WEA consult AWBI when consenting to the export of bagged and containerised wheat; and • removing for a three-year trial the requirement that the WEA obtain written approval from AWBI for the export of durum wheat.	In April 2001, the Government announced it would retain the export monopoly, but it: • declined to incorporate NCP principles in the 2004 review; • retained the requirement that the WEA consult with AWBI when consenting to the export of bagged and containerised wheat; and • retained the requirement for AWBI's written approval of the export of durum wheat.	Does not meet CPA obligations (June 2002)

(*continued*)

Table 1.3: continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Grain Marketing Act 1991*	Grants a monopoly to the NSW Grains Board over domestic and export marketing of all barley, sorghum, oats, canola, safflower, sunflower, linseed and soybeans grown in the State.	Review was completed in July 1999. It recommended: • removing restrictions on domestic sales by no later than 31 August 2001 for malting barley and by no later than 31 August 2000 for all other grains; • retaining restrictions on export sales of feed and malting barley for only overseas markets where market power or access premiums can be demonstrated, subject to a further review by 31 August 2004; and • removing restrictions on export sales of all other grains by 31 August 2001 for canola and by 31 August 2000 for sorghum, oats, safflowers, linseed and soybeans.	In October 2000, the Government announced that it would retain restrictions until 2005 on: • domestic sales of malting barley; • all export sales of feed and malting barley; and • all export sales of sorghum and canola. There will be no further review and Grainco Australia acts as an agent to the insolvent Grains Board. An Independent Monitoring Committee will scrutinise prices achieved by Grainco Australia.	Does not meet CPA obligations (June 2002)
Victoria	*Barley Marketing Act 1993*	Granted a monopoly to the Australian Barley Board over domestic and export marketing of all barley grown in the State.	Review of this Act and the South Australian Act was completed in 1998, recommending that Victoria: • remove the domestic barley marketing monopoly; • retain the export barley marketing monopoly for only the 'shortest possible transition period'; and • restructure the Australian Barley Board as a private grower-owned company.	Act was amended in 1999 to remove the monopoly on: • domestic barley from 1 July 1999; and • export barley from 1 July 2001. The board was transferred to grower ownership on 1 July 1999. It has no regulatory powers.	Meets CPA obligations (June 2001)

(*continued*)

Table 1.3: continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Grain Industry (Restructuring) Act 1993*	Granted a monopoly to Grainco Australia Limited over domestic and export marketing of all barley grown in the State	Review was completed in 1997, recommending that Queensland: • remove the domestic monopoly; and • extend the export monopoly until at least mid-2002.	The Government accepted the recommendations and amended the legislation accordingly, including sunsetting the export monopoly on 30 June 2002.	Meets CPA obligations (June 2002)
Western Australia	*Grain Marketing Act 1975*	Grants a monopoly to the Grain Pool of Western Australia over export marketing of all barley, lupins and canola grown in the State	Departmental review was completed in 2002, recommending that the Government: • establish a licensing authority to issue permits for bulk grain exports by parties other than the Grain Pool; and • allow free export of grain in bags and containers.	The Grain Marketing Act 2002 establishes a bulk grain export licensing scheme and repeals the former Act. It will expire following the removal of the Commonwealth's wheat export restrictions. Ministerial guidelines for the Grain Licensing Authority are still to be completed.	Review and reform incomplete
South Australia	*Barley Marketing Act 1993*	Grants a monopoly to Australian Barley Board over domestic and export marketing of all barley and oats grown in the State	Review of this Act and the Victorian Act completed in 1998 (see above). Following the removal of the June 2001 sunset, a further review was completed in June 2003, recommending 'controlled deregulation' via a licensing authority similar to that being established in Western Australia.	No reform is expected until 2004 autumn session of Parliament.	Review and reform incomplete
Northern Territory	*Grain Marketing Act 1983*	Granted a monopoly to the Grain Marketing Board over domestic and export marketing of all barley and coarse grains grown in the Territory	Review was completed in 1997, recommending repeal of the Act.	Act was repealed in 1997.	Meets CPA obligations (June 2001)

Dairy

The dairy industry is a major rural industry in Australia. Based on a farmgate value of production just over A$3.7 billion dollars in 2001-02, it ranks third behind the wheat and beef industries. Over 55 per cent of Australian milk production is exported — primarily as manufactured products — at international market prices for a value of A$3.3 billion dollars in 2001-02 (ADC 2002).

Commonwealth

At the time the CPA came into being, the Commonwealth Government regulated the dairy industry principally under the *Dairy Produce Act 1986*. This Act established the Australian Dairy Corporation and provided for the operation of the Domestic Market Support scheme and the licensing of dairy exports to markets with access restrictions — namely:

- cheese, skim milk powder and butter to Japan; and
- cheese to the European Union.

Through the 1980s and 1990s, the Domestic Market Support scheme made annual payments to dairy farmers based on their production of milk for manufacturing into processed dairy products other than drinking milk. In 1999-2000, the payment was around 0.95 cents per litre. The scheme was funded by a levy on sales of drinking milk and milk used for manufacturing dairy products sold in the domestic market. The net effect of the scheme was to subsidise the export of manufactured dairy products.

The Commonwealth also restricted some cheese imports by applying a tariff quota system.

Review and reform activity

As scheduled the Domestic Market Support scheme ceased on 1 July 2000. The Commonwealth had scheduled the Dairy Produce Act for review by the Productivity Commission in 1998-99. In 1999, it deferred the review in light of other industry reforms then under way. Later, the Australian Dairy Corporation announced the end of licensing for cheese exports to Japan from July 2002, and the review of other export restrictions. From July 2003, the Australian Dairy Corporation was converted to a company limited by guarantee constituted under the *Corporations Act 2001*. Additionally, all the assets and liabilities of the Dairy Research and Development Corporation were transferred to the new company, Dairy Australia. As a result of these reforms, the remaining restrictions for a small number of cheese products exported to the EU and US will be managed by the Commonwealth

Department of Agriculture, Fisheries and Forestry. The Commonwealth now intends to reconsider the remaining export restrictions, including consideration of the appropriate nature and scope of any review, in light of these latest reforms.

Assessment

The Council assesses the Commonwealth Government as not having met its CPA clause 5 obligations relating to the Dairy Produce Act because some restrictions remain which have not been reviewed.

States and the ACT

For 20 years or more, the States and the ACT governments controlled the pricing and supply of milk for drinking (known as 'market milk'). Each vested ownership of milk in a statutory dairy marketing authority that paid eligible dairy farmers a fixed price for market milk. This price was more than twice what dairy farmers received for freely traded 'manufacturing milk' (milk for processing into dairy products such as butter, cheese and milk powder). In New South Wales, Western Australia and south east and central Queensland, a dairy farmer had to own market milk quotas to receive the higher market milk price. In Victoria, north Queensland, South Australia and Tasmania, all farmers received a share of the higher market milk price, in proportion to their share of all State milk production. The ACT maintained post-farmgate restrictions and licensing of home vending.

Review and reform activity

All States and the ACT removed their controls on the pricing and supply of market milk from 30 June 2000. This followed several important events.

- In April 1999, the Australian Dairy Industry Council proposed nationwide deregulation with adjustment assistance.
- In July 1999, the Victorian Government released the report of an independent review of its *Dairy Industry Act 1992*, which recommended the removal of price and supply management arrangements.
- In September 1999, recognising the likely severe impact of deregulation on some dairy farmers and communities, the Commonwealth Government announced that it would make available a substantial adjustment assistance package if national deregulation proceeded.
- In early 2000, the Victorian Government confirmed that it would proceed with deregulating its statutory milk marketing arrangements.

- In March 2000, all Australian agriculture Ministers agreed that deregulation was inevitable and that they would rapidly proceed to introduce the necessary legislation to deregulate market milk arrangements on a 'best endeavours' basis.

- On or about 30 June 2000, all States and the ACT passed deregulatory legislation.

As part of the legislative reforms, State governments wound up or transferred to industry the commercial functions of their dairy authorities, and established their food safety regulatory function within food safety authorities.

Assessment

The Council concluded in its 2001 NCP assessment that all States and the ACT had fulfilled their CPA clause 4 and 5 obligations in relation to the regulation of milk supply and prices, and the reform of the statutory dairy authorities. The changes made to food safety regulation of the dairy industry have been assessed alongside other reforms of food regulation (see the section 'Agriculture-related products and services').

Table 1.4 summarises government's progress in reviewing and reforming dairy industry legislation.

Table 1.4: Review and reform of legislation regulating the marketing of milk and dairy products

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Dairy Produce Act 1986*	Licensing of dairy exports; support for domestic manufacture of dairy products	Review of export licensing arrangements deferred due to ongoing deregulatory changes and industry reforms. The Commonwealth now intends to consider the nature and scope of any review.	The domestic market support scheme expired on 30 June 2000. Licensing of cheese exports to Japan ended on 30 June 2002. Other restrictions may remain.	Review and reform incomplete
New South Wales	*Dairy Industry Act 1979*	Vesting of ownership of milk in the Dairy Corporation; farmgate price-setting for market milk; market milk quotas; licensing of farmers and processors	Review by a joint government–industry panel was completed in November 1997. Chair and industry members recommended retaining restrictions subject to review again in 2003. Other government members recommended removing restrictions within three to five years if national reform did not occur.	Act was repealed by the *Dairy Industry Act 2000* following national agreement to deregulate. Food safety regulation was previously integrated under *Food Production (Safety) Act 1998*.	Meets CPA obligations (June 2001)
Victoria	*Dairy Industry Act 1992*	Vesting of milk in Victorian Dairy Industry Authority; farmgate price-setting for market milk; pooling of market milk returns; licensing of farmers, processors, distributors and carriers	Review by independent consultant was completed in 1999. It recommended the removal of all restrictions except those that safeguard public health. It further recommended third party auditing of dairy food safety regulation subject to acceptance of importing countries.	Act was repealed by *Dairy Act 2000* following national agreement to deregulate. New Act establishes Dairy Food Safety Victoria to regulate dairy food safety.	Meets CPA obligations (June 2001)

(*continued*)

Table 1.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Dairy Industry Act 1993*	Vesting of milk in Queensland Dairy Industry Authority; farmgate price-setting for market milk; market milk quotas; licensing of farmers and processors	Review by a joint government–industry panel was completed in 1998. It recommended: • retaining farmgate price regulation for five years to December 2003, but reviewing it again before 1 January 2001; and • extending quota arrangements from south Queensland into central and north Queensland for five years.	Vesting, price-setting and quota provisions were removed by the *Dairy Industry (Implementation of National Adjustment Arrangements) Amendment Act 2000* following national agreement to deregulate. Food Safety Queensland assumed responsibility for dairy food safety under the *Food Production (Safety) Act 2000.*	Meets CPA obligations (June 2001)
Western Australia	*Dairy Industry Act 1973*	Vesting of milk in the Dairy Industry Authority; farmgate price-setting for market milk; market milk quotas; licensing of farmers and processors.	Review by officials, assisted by an industry working party, was completed in 1998. It recommended repeal of the Act upon deregulation by Victoria.	Act was repealed by the *Dairy Industry and Herd Improvement Legislation Repeal Act 2000* following national agreement to deregulate.	Meets CPA obligations (June 2001)
South Australia	*Dairy Industry Act 1992*	Vesting of milk in Dairy Authority of South Australia; farmgate price-setting for market milk; pooling of market milk returns; licensing of farmers, processors and vendors	Price-setting restrictions reviewed in 1999 by officials. The review recommended removal of these. Food safety provisions remain under review by officials.	Vesting, price-setting and pooling provisions were removed by the *Dairy Industry (Deregulation of Prices) Amendment Act 2000* following national agreement to deregulate.	Meets CPA obligations (June 2001)

(*continued*)

Table 1.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Dairy Industry Act 1994*	Vesting of milk in Tasmanian Dairy Industry Authority; farmgate price-setting for market milk; pooling of market milk returns; licensing of farmers, processors, manufacturers and vendors	Review by a government–industry panel was completed in 1999. It recommended deregulation after five years subject to outcome of Victoria's dairy legislation review and national reforms.	Vesting, price-fixing and pooling provisions were removed by the *Dairy Amendment Act 2000* following national agreement to deregulate.	Meets CPA obligations (June 2001)
ACT	*Milk Authority Act 1971*	Retail price controls; licensing of home vending; requirement that Canberra Milk Authority buy milk from sole ACT producer	Review by officials was completed in 1998. It recommended: • separating the authority's regulatory and commercial roles; • retaining retail price controls until mid-2000; • reforming home vending arrangements; and retaining compulsory acquisition of ACT milk.	The Government initially endorsed the review recommendations. Act was repealed by the *Milk Authority Repeal Act 2000* following national agreement to deregulate.	Meets CPA obligations (June 2001)

Eggs

Queensland, Western Australia and Tasmania scheduled for NCP review their legislation restricting competition in the egg industry. In its 2002 NCP assessment, the Council assessed Queensland as having met its CPA obligations in relation to its egg industry legislation.

Table 1.5 summarises government's progress in reviewing and reforming egg marketing legislation.

Western Australia

Western Australia regulates its egg industry under the *Marketing of Eggs Act 1945*. The Act restricts egg supply through producer licensing and production quotas and grading, and prohibits producers from supplying eggs to anyone other than the Egg Marketing Board.

Review and reform activity

The State Government commenced a review of the Act in 2002 with the release of a discussion paper inviting comment on four options:

- keeping the status quo (conducting a further review in five years);
- removing the marketing monopoly while retaining licensing and production quotas;
- removing all regulation and transferring the board's business to a grower co-operative; or
- removing all regulation and transferring the board's business to a grower-owned company.

In August 2003 the Government endorsed the removal of competitive restrictions on the supply and marketing of eggs by July 2007. At the time of reporting the Government was still considering the precise timing and mode of reform. It had not released the final report of the review.

Assessment

The Council assesses that Western Australia has not met its CPA clause 5 obligations arising from the Marketing of Eggs Act as fulfilment of its review and reform obligation is incomplete and the Government has not provided public interest evidence to support a delay to reform.

Tasmania

Tasmania regulated its egg industry via the *Egg Industry Act 1988*. The Act restricted egg supply through producer licensing and production quotas, and vested ownership of eggs in the Egg Marketing Board.

Review and reform activity

The Tasmanian Government completed a review of the Act in July 1999. The review recommended removing producer licensing, production quotas, the vested ownership and minimum quality standards.

The Act was repealed and replaced by the *Egg Industry Act 2002*, which establishes a mandatory quality assurance scheme for producers with 20 or more hens. The quality assurance scheme provisions will not commence until assessed as being in the public interest via a regulatory impact statement.

Assessment

The Council assesses that Tasmania has met its related CPA clause 5 obligations in this area by removing the restrictions imposed by the former Egg Industry Act.

Table 1.5: Review and reform of legislation regulating the marketing of eggs

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Egg Industry (Restructuring) Act 1993*	Producer licensing; production quotas; vesting and marketing monopoly	Not reviewed.	The Act was repealed on the sunset date of 31 December 1998.	Meets CPA obligations (June 2002)
Western Australia	*Marketing of Eggs Act 1945*	Producer licensing; production quotas; marketing monopoly	The Government decided in July 2003 to remove the restrictions by July 2007 but has not finalised implementation.	No reform yet.	Review and reform incomplete
Tasmania	*Egg Industry Act 1988*	Producer licensing; production quotas; vesting and marketing monopoly	Review was completed in July 1999, recommending removal of all restrictions on competition.	Act was repealed and replaced by the Egg Industry Act 2002. Commencement of quality assurance scheme subject to a RIS.	Meets CPA obligations (June 2003)

Poultry meat

The Australian poultry meat industry is composed of breeders, hatcheries, growers, wholesalers and retailers. There is a high degree of vertical integration in the industry. Processors own and operate breeding farms, hatcheries, feed mills, processing plants and some growing farms. Other growing farms are independently owned. However, they are contracted to provide growing services to individual processors using day-old chicks, feed and other inputs provided by processors.

Australian poultry meat consumption was 704 000 tonnes (or 34.5 kilograms per head) in 2001-02. Poultry consumption in Australia is second only to beef consumption at 35 kilograms per head (McDonald et al 2003). New South Wales is the State with the largest production of chicken meat, followed by Victoria, Queensland and South Australia.

New South Wales, Victoria, Queensland, Western Australia and South Australia have all regulated the commercial relationships between poultry growers and processors. This regulation has traditionally required growers and processors to bargain through representatives on a central industry committee. In practice, independent members of the committee usually arbitrate on price and other contract conditions.

The common argument for regulating the industry is that growers have unusually weak bargaining power in negotiating agreements with processors because:

- in most regions there are many growers and few (occasionally just one) processors; and

- growers' investment in growing sheds and plant has little value other than for growing chickens and may be tailored to the specific requirements of one processor.

However, the problem of weak bargaining power may be exaggerated. Potential entrants to chicken growing are not encumbered by existing investment and are free to pursue an agreement with whichever processor they wish, or to withdraw. Similarly, those existing growers who must substantially reinvest to remain in the industry (whether due to technological obsolescence or changes in surrounding land uses) are less encumbered. Processors rely on growers investing in new capacity to allow them to increase their sales and to replace capacity rendered obsolete by technological innovation or threatened by land use changes.

Generally, therefore, growers have adequate bargaining power and invest only if they are confident that processors are offering sufficient and secure returns for their investment and labour. There may, nevertheless, be circumstances where a processor could deal with individual existing growers inequitably without materially harming the processor's own future interests.

The TPA provides remedies for small businesses subject to unconscionable conduct by larger businesses. However, individual growers have limited resources to pursue such remedies. Voluntary grower associations can assist affected members to pursue these remedies and, over the longer term, assist all members to pursue agreements with processors that reduce the scope for unconscionable conduct. Voluntary collective action is anticompetitive, but may be authorised by the Australian Competition and Consumer Commission (ACCC) if it considers the benefits to the community outweigh the costs. Alternatively, States may legislate to provide a similar voluntary collective bargaining framework.

Table 1.6 summarises government's progress in reviewing and reforming legislation regulating chicken growing services.

New South Wales

The *Poultry Meat Industry Act 1996* in New South Wales establishes a central industry committee of grower, processor and independent members that sets a standard pricing formula and standard growing contract.

Review and reform activity

The State Government submitted the Act to review by a group of grower, processor and government representatives in 1998. This group was unable to agree, so the State Government commissioned Hassall & Associates in March 2001 to undertake a net public benefit analysis. The State Government has not released this analysis, but reported the finding that the Act imposes a small net public cost equivalent to 1 per cent of the retail price of chicken meat.

The State Government announced on 13 November 2001 that it would not remove the restrictions on competition because they are necessary to countervail the market power of processors. Later in 2002, the Act was amended to authorise the anticompetitive conduct of the industry committee under the TPA and to allow additional pricing flexibility within limits approved by the committee.

Assessment

The Council found in the 2002 NCP assessment that the New South Wales Government had not satisfactorily met its CPA clause 5 obligation relating to this Act (NCC 2002, pp. 4.24–4.25). Notwithstanding the additional flexibility afforded by the 2002 amendments, the Act continues to restrict competition between processors and between growers by setting base rates for growing fees centrally and by prohibiting agreements unless approved by the industry committee. For the 2002 NCP assessment, the State Government failed to

show that these restrictions were in the public interest and, moreover, failed to conduct an open NCP review process.

The State Government has since presented the Council with additional arguments for not removing centralised bargaining. It argued that:

- growers' bargaining power is weak and likely to remain so beyond the five-year term of authorisations by the ACCC; and
- centralised bargaining arrangements, as amended, do not produce substantially different outcomes from those that could be expected otherwise.

The Council considers that these arguments are not sufficient to justify retaining centralised bargaining.

Two features of the centralised bargaining arrangement particularly concern the Council. First, the arrangement involves collective bargaining by processors — a restriction on competition for which there is no benefit to the community but from which significant risks may arise if it leads to collusive or exclusive conduct in the downstream chicken meat product and related markets. Second, the arrangement is compulsory, so growers cannot bargain on their own account. This feature is likely to significantly hamper new grower entry and innovation in production and supply management practices. Growing prices and investment under centralised bargaining are unlikely to be similar to the growth that would occur without the restriction.

The State Government also claims that centralised bargaining will facilitate orderly industry adjustment over the period to June 2004 when existing grower contracts expire. The Council accepts that the State's chicken meat industry faces a period of substantial adjustment. However, centralised bargaining is likely to raise adjustment costs for at least some growers, as growing and processing capacity are shifted to jurisdictions that have less restrictive regulatory regimes (such as Victoria and Queensland). Alternative measures, such as advisory assistance for growers and a scheme for mediation of disputes under existing contracts, could improve growers' confidence and ability to adjust more effectively and for less cost than under centralised bargaining.

The Council thus reaffirms its 2002 assessment that the New South Wales State Government has not met its CPA clause 5 obligation relating to centralised bargaining under the Poultry Meat Industry Act.

Victoria

Victoria's *Broiler Chicken Industry Act 1978* establishes a central industry committee of grower, processor and independent members, and empowers the committee to set a standard growing price and to prescribe standard contract terms and conditions.

Review and reform activity

Victoria completed a review of the Act in November 1999. Independent adviser KPMG found that the price determination arrangements impose a net cost on the community as a whole and are likely to breach the TPA. It recommended that producers seek authorisation from the ACCC for growers to bargain collectively with their respective processor, and that the Victorian Government repeal the Act and its Regulations.

Subsequently, Marven Poultry and five other Victorian processors applied to the ACCC for authorisation. The ACCC granted an authorisation on 29 June 2001 for five years.

The State Government has not repealed the Act, but the Act no longer restricts competition because the industry committee has ceased to be involved in contract negotiations.

Assessment

In 2002, the Council assessed that Victoria had met its CPA clause 5 obligation in relation to the Broiler Chicken Industry Act.

Queensland

Prior to reform, Queensland's *Chicken Meat Industry Committee Act 1976* established a central industry committee of grower, processor and independent members and empowered the committee to approve contracts between growers and processors and to negotiate growing prices.

Review and reform activity

Queensland completed a review of the Act in 1997. The review recommended:

- shifting the industry committee's role from a prescriptive one to a facilitative one, whereby it convenes representative groups of producers to negotiate with each processor and refers disputes to mediation or arbitration; and
- specifically prohibiting the industry committee from recommending or providing information on growing fees.

The State Government agreed to these recommendations in December 1998. The necessary amendments took effect from October 1999.

Assessment

In 1999, the Council assessed that Queensland had met its CPA clause 5 obligation in relation to the Chicken Meat Industry Act.

Western Australia

Western Australia's *Chicken Meat Industry Act 1977* establishes a central industry committee of grower, processor and independent members, and empowers the committee to set a standard growing price, prescribe standard contract terms and conditions, and approve the establishment of growing facilities. The Act also prohibits the establishment of new processing facilities without the approval of the Minister.

Review and reform activity

Western Australia reviewed the Act in 1997. The review by Agriculture Western Australia (now the Department of Agriculture) recommended:

- retaining the industry committee's power to set industry-wide supply fees, subject to:
  - allowing growers to opt out of industry-wide negotiations; and
  - further reviewing this restriction in five years;
- removing controls on entry to the processing and growing sectors.

A Bill to amend the Act and remove the committee's power to prescribe contracts was introduced in 2000 but lapsed at the 2001 State election. These amendments are again before Parliament within the Acts Amendment and Repeal (Competition Policy) Bill 2002 and are expected to be passed in the 2003 spring session of Parliament.

Assessment

The Council assesses that Western Australia has not yet met its CPA clause 5 obligation relating to the Chicken Meat Industry Act as reforms to restrictions on competition imposed by the Act are still to be passed.

When these reforms are passed, the Act will continue to provide for collective bargaining between growers and processors via a central industry committee. As noted above, no community benefit arises from restricting competition between processors, and significant costs may arise if collective bargaining fosters collusive or exclusive conduct by processors in the downstream chicken meat product and related markets. However, no such collective bargaining activity is exempt from action under the TPA, so the Council expects the industry committee to withdraw from involvement in contract negotiations. Nevertheless, it would be preferable if such provisions were repealed.

South Australia

South Australia's *Poultry Meat Industry Act 1969* establishes a central industry committee of grower, processor and independent members, and empowers the committee to set a standard growing price, approve growing contracts and approve the establishment of growing facilities.

Review and reform activity

South Australia reviewed the Act before the CPA commenced in 1995. The review found that general competition law is sufficient to protect growers and that industry-specific legislation is not required. In 1996, the then State Government decided to repeal the Act but did not proceed following opposition in Parliament. Nevertheless, with the extension of the TPA via the Competition Code Agreement, the industry committee ceased to operate and the Act has not been enforced.

In 1997, the major processors applied for and obtained five-year ACCC authorisations for their growers to voluntarily bargain collectively. Inghams Pty Ltd, the only remaining major processor, obtained a new authorisation in January 2003 for five years.

In July 2003 the South Australian Parliament passed the *Chicken Meat Industry Act 2003*. The new legislation:

- repeals the former Act;
- authorises growers to bargain collectively with individual processors;
- provides for compulsory arbitration of disputes arising in the collective bargaining of growing service contracts; and
- allows a grower not offered a new growing agreement to refer the exclusion to compulsory mediation and arbitration.

The legislation also provides for a statutory review of its impact within six years of its passage.

In accordance with the CPA clause 5, the Government presented its public interest arguments through the conduct by officials of an NCP review of the draft Bill, consultation with interested parties and the general public, and the release in November 2002 of a final report. The review found that the then proposed restrictions met the public interest test.

Assessment

The Council assessed in 2002 that South Australia had met its CPA clause 5 obligations relating to the Poultry Meat Industry Act, given that the

legislation, while not reformed, no longer restricted competition in the market for chicken growing services.

The Council now assesses that South Australia, in introducing new competition restrictions into the chicken growing services market, has not met its CPA clause 5 obligations, as these restrictions are not in the public interest.

According to the review report, the restrictions will benefit the community by improving relationships between growers and their processor, improving the accuracy of pricing and ensuring industry rationalisation occurs at an appropriate pace (Bartsch et al. 2002, p. 43). The review provided little evidence to support these claims, however. The Council is not convinced of these benefits.

- It is reasonable to expect that the availability of compulsory mediation and, in particular, arbitration would tend to drive the negotiating parties apart more than bring their positions together, because neither party is likely to put its best offer on the table if it expects a third party to impose a compromise between the parties' respective offers.

- There is no reason to expect that a third party, with less expertise and stake in the outcome of negotiations, can more accurately determine efficient prices than the negotiating parties themselves.

- The review does not explain what pace of rationalisation is appropriate, but it cannot be assumed that a slow pace is of benefit to the community. The community may be worse off if the new legislation holds back resources from reallocation to more productive uses.

Compulsory arbitration and mediation of disputes over new contracts and over processor selection of growers are likely to increase the transaction costs of forming and renewing commercial relationships and could lead to higher grower fees. The latter effect may be in the short-term interests of some growers (particularly those who intend to exit before the next contracting round), but would not be in the long-term interests of growers if processors consequently consider South Australia to be a relatively less attractive location for processing investment. The additional adjustment costs resulting from reduced processor demand for chicken growing services in South Australia is likely to outweigh any benefit to the community.

The Council acknowledges that the South Australian industry is facing a period of substantial adjustment, irrespective of regulatory change, due to the relocation of some production outside the State, changes in technology and changes in land use in some areas where growing facilities are concentrated. There may be a place for government intervention that lowers adjustment costs and improves growers' confidence in their ability to prosper in a competitive environment. Such objectives can be achieved without restricting competition, such as through direct assistance for growers via training and professional advice in business planning, bargaining and obtaining land use planning approvals.

The Council is also concerned that, with the passage of this legislation, there is a prospect of similar or more restrictive arrangements being introduced in jurisdictions that earlier opened their markets to greater competition. The wider reintroduction of restrictions in the chicken meat growing services market would reduce competition between States for industry capacity and investment and could lead over time to higher retail prices for chicken meat products and hence increasing net costs to the community from such regulation.

Table 1.6: Review and reform of legislation regulating chicken growing services

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Poultry Meat Industry Act 1986*	Prohibits supply of chickens unless under a growing fee formula and an agreement approved by the industry committee	First review by government, processor and grower representatives failed to reach agreement. Independent review found the Act imposed a small net cost on the community. No report has been released.	The Act was amended in June 2002 but these amendments essentially retained existing restrictions (and protected the arrangements from challenge under the TPA).	Does not meet CPA obligations (June 2002)
Victoria	*Broiler Chicken Industry Act 1978*	Prohibits supply of chickens unless under an agreement consistent with terms determined by the industry negotiation committee	Review was completed in 1999, recommending that producers seek ACCC authorisation for collective bargaining and that the Government repeal the Act.	Act has been retained but the industry committee is not to be involved in collective bargaining. The ACCC has authorised grower collective bargaining by processor.	Meets CPA obligations (June 2002)
Queensland	*Chicken Meat Industry Committee Act 1976*	Prohibited supply of chickens unless under an agreement approved by the industry committee	Review was completed in 1997, recommending that the industry committee convene groups of producers to negotiate with processors, but be barred from intervening in negotiations on growing fees.	Recommended amendments were made to the Act in 1999.	Meets CPA obligations (June 2002)

(*continued*)

Table 1.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Chicken Meat Industry Act 1976*	Prohibits supply of chickens unless under an agreement approved by the industry committee; requires approval of processing plants and growing facilities	Review was completed in 1997, recommending that the Government retain industry-wide collective bargaining (subject to allowing growers to opt out and to reviewing the arrangement after five years) and remove controls on grower and processor entry.	Act is to be amended in 2003 as recommended. Collective bargaining not exempt from the TPA.	Review and reform incomplete
South Australia	*Poultry Meat Industry Act 1969*	Prohibits processing of chickens unless from approved farms and under an approved agreement	Review was completed in 1994, recommending that producers seek ACCC authorisation for collective bargaining with each processor and that the Government repeal the Act.	Industry committee ceased to operate in 1996 following the Competition Code Agreement. Repealed in July 2003 by the *Chicken Meat Industry Act 2003* (see below).	Meets CPA obligations (June 2002)
	Chicken Meat Industry Act 2003	Authorises collective bargaining by growers with individual processors; compulsory arbitration of disputes over proposed new contracts and processor selection of growers.	Review by officials in drafting the legislation completed in November 2002, finding that the then proposed restrictions were in the public interest.	The Act was passed in July 2003.	Does not meet CPA obligations (June 2003)

Other commodities

Other key primary products subject to anticompetitive marketing regulation have been:

- dried fruit;
- potatoes;
- rice; and
- sugar.

In its 2002 NCP assessment, the Council found that Queensland had met its CPA clause 5 obligation relating to the regulation of the sugar marketing. Still outstanding at June 2002 was review and reform activity relating to marketing regulation for dairy exports, dried fruit exports, potatoes and rice. Table 1.7 summarises government's progress in reviewing and reforming legislation governing the marketing of other primary products.

Dried fruit

The Commonwealth Government has regulated the production and export marketing of various horticultural products. It listed for NCP review several pieces of legislation related to dried vine fruit:

- the *Dried Vine Fruits Equalization Act 1978*, which equalises returns from the export of dried fruit;
- the *Dried Sultana Production Underwriting Act 1982*, which underwrites the production of sultanas;
- the *Dried Vine Fruits Legislation Amendment Act 1991*; and
- Regulations under the *Australian Horticultural Corporation Act 1987* that restrict the export of dried vine fruit.

The Australian Horticulture Corporation Act and other Regulations under the Act were not listed for NCP review. This legislation provided for the Australian Horticultural Corporation to control the export of horticultural products, including citrus fruits, pears, apples and stone fruits. These controls operated via licences and/or permissions with attached conditions such as:

- the nomination of import agents;
- prices, quality and grades;
- packaging, labelling and description; and

- the form of consignment, exporter commissions, carriage and insurance arrangements.

Review and reform activity

The Dried Vine Fruits Equalization Act, the Dried Sultana Production Underwriting Act and the Dried Vine Fruits Legislation Amendment Act were repealed without review.

The dried fruits export control regulations made under the Australian Horticultural Corporation Act expired at the beginning of 2003 as part of the transition from this Act, which has been repealed, to the *Horticulture Marketing and Research and Development Services Act 2000*. New dried fruit export licensing arrangements are now in place that require businesses exporting 100 tonnes or more of product to meet various quality standards, to obtain export credit insurance and to provide data for the collation of export statistics. As required under the new Act the Secretary of the Commonwealth Department of Agriculture, Fisheries and Forestry approved these controls only after the preparation of a satisfactory regulatory impact statement. Horticulture Australia Limited must report on the performance of export controls annually and, with the department, review its powers under NCP principles every three years.

Assessment

The Council assesses the Commonwealth as having met its CPA clause 5 obligations in relation to dried vine fruit legislation via its repeal.

Potatoes

The growing and marketing of potatoes in Western Australia are controlled under the *Marketing of Potatoes Act 1946*. The Act prohibits the production of potatoes in Western Australia for fresh domestic sale unless licensed by the Potato Marketing Corporation. These licences restrict land available for growing potatoes for fresh consumption but not for processing or export. The Corporation pools returns from the sale of potatoes to wholesalers and pays growers the proceeds after deduction of its own costs. Grower payments reflect grading and volume but not variety.

Review and reform activity

The Department of Agriculture completed a review of the legislation in December 2002. The review found that:

- removal of the Corporation's supply management and marketing powers would allow the entry of larger producers with lower costs of production but bring substantial adjustment costs for existing growers;

- benefits to the community from restricting potato supply and fixing potato prices exceed costs; and

- alternatives to the restrictions, such as establishing a grower-owned co-operative, would not achieve the objectives of the legislation because they would not restrict supply.

The review concluded that evidence for a net public benefit from deregulation remained inconclusive because retail prices may not fall and there would be substantial adjustment costs.

It recommended the Government maintain the current regulated supply system given the lack of evidence that any major changes would result in improvement in the public interest. It also recommended the Government investigate ways to improve the operation of the Act.

On 5 August 2003 the Minister for Agriculture announced that the State Government would retain the marketing powers of the Potato Marketing Corporation.

Assessment

The Council assesses that Western Australia has not met its CPA clause 5 obligations relating to the Marketing of Potatoes Act. The review, in finding that evidence for the net public benefit was inconclusive, reversed the presumption required by the CPA clause 5 – that legislation should not restrict competition unless this is in the public interest. It also failed to adequately demonstrate that the supply management and price-fixing powers of the Potato Marketing Corporation are in the public interest.

According to the review the community benefits from these powers arise through:

- enabling growers to countervail the market power of retailers;

- stabilising retail prices for consumers;

- reducing wastage;

- guaranteed payments to growers; and

- more effective disease control.

The Council does not accept that providing countervailing market power is of itself a community benefit, although in some circumstances it may have beneficial consequences, such as reducing the opportunities for unconscionable conduct by large businesses towards small businesses, and

assisting small businesses to become more efficient. However, it may also impose costs on the community, such as higher prices for consumers and reduced product choice.

The review did not claim that, in the absence of the Corporations powers, potato growers would face a significant degree of unconscionable conduct by wholesalers or retailers, or that growers would be less efficient. In any case, such benefits can be achieved without restricting entry to potato growing or the area of land available for potato growing: for example, through grower associations and co-operatives.

The review argued that, due to the Corporation's powers, growers receive higher returns, but prices paid by consumers are probably no higher, as:

- the Corporation competes in the Western Australian market with potato imports from interstate – principally South Australia and Queensland – which prevents the Corporation pricing above import price parity; and

- retailers accept lower margins than they would in the absence of these powers.

The review also drew on analysis prepared for the Corporation which indicated that, between January to June 2003, Perth potato prices were below the average of prices in other capital cities in all months except September 2002.

The Council is not satisfied by the evidence available that consumers are not disadvantaged by the Corporation's powers.

In an open market potato prices could be significantly lower than import price parity given relatively low costs of substitution by growers between fresh, seed and processing markets and the growing of other vegetable crops (most licensed potato growers already grow potatoes for seed and processing and grow other vegetables). Essentially, domestic fresh potato prices may be restrained by low costs of entry into this market for other Western Australian growers, rather than by potato imports from South Australia, which the review notes face freight costs of 20 cents per kilogram or around 15% of retail prices.

The review does not explain why retailers might be accepting lower margins on potatoes than they would in the absence of the Corporation's powers. This claim is not supported by experience in the fresh milk sector. The ACCC, in its study of the impact of farmgate deregulation in the milk industry, found that retail margins fell significantly.

> *From the June to December 2000 quarter, the gross margin on aggregate milk sales in supermarkets declined by 19 per cent with retail prices falling at a greater rate than wholesale prices. Despite sales volumes increasing by around six per cent, substantial reductions in per litre revenue led to an overall decrease in aggregate milk sales revenue for Australian supermarkets during this period. In*

> *convenience stores, sales volumes declined by around 24 per cent in the September quarter. With the per litre cost of milk remaining relatively constant in convenience stores, aggregate revenue decreased by around 24 per cent as consumers bought more of their milk from supermarkets.* (ACCC 2001a, p. 95)

Without the Corporation's powers fresh potato retail margins may be higher or lower than they are at present. It seems most unlikely; however, that retailers would capture all savings in wholesale prices; and that consumers would see no savings.

In addition the Corporation's interstate price survey is not conclusive. Details of the survey method have not been made available to the Council. The Council understands the survey was limited to loose washed potatoes sold in three supermarket chains in the capital of each state and the Northern Territory. The sample did not include bagged washed potatoes or dry-brushed potatoes, or other retail outlets. Consequently the Council is not convinced that the survey sample was sufficiently representative.

The Council also notes that consumers outside of Western Australia have greater choice of potato variety (itself a cost of the Corporation's powers). The survey results may be biased if average prices measured in other capitals reflect in part more preferred varieties that are lower yielding and hence more expensive to grow.

Finally, while the Council has no evidence, the Corporation may have temporarily moderated its pricing in response to the threat of deregulation, and particularly for the duration of its price survey. Such conduct is by no means unprecedented amongst statutory marketing authorities. For example, the inquiry into the collapse of the New South Wales Grains Board by the Public Accounts Committee of the New South Wales Parliament found that the Board changed its business strategy in response to the threat of deregulation:

> *In its later years, the Grains Board's growth strategy required generous prices being paid to growers to achieve the volume. This placed the Grains Board's financial performance at risk. The growth strategy was motivated and directed at fighting market deregulation proposed by the national competition review.* (Public Accounts Committee [New South Wales Parliament] 2001, p. viii)

Turning to the other claims of benefits to the community, the Council does not believe these hold or are significant.

- The Council accepts that Western Australian retail potato prices exhibit less volatility than retail prices elsewhere, but is not convinced that this is of significant value to consumers, as potatoes make up a small share of the household budget and are readily substitutable (for example, with pasta and rice).

- It is not clear why the community would value guaranteed payments for growers of potatoes for fresh consumption but not for other producers.

- Any reduction in wastage of potatoes from the Corporation matching supply to expected demand must be offset against lower overall productivity of Western Australian growers due to the relatively small scale of most potato growing operations and higher fertiliser and other inputs.

- Restricting supply and fixing prices are not necessary to control plant disease.

The review identifies various costs to the community from the Corporation's powers. As noted above, retail prices are probably higher than they would otherwise be – this is strongly indicated by trades in area licences averaging $7000 per hectare or $25 per tonne (Department of Agriculture [Western Australia] 2002, p. 12) – and consumer choice and grower productivity are certainly lower. In addition, the powers impose additional costs on the community via:

- the Corporation's costs in administering and enforcing the supply restrictions – estimated by the review to be up to $2.7 million per annum; and

- growers' costs in complying with supply restrictions.

The review also notes scientific evidence of adverse impacts on groundwater quality from high fertiliser application in response to land area licensing.

In light of the important weaknesses identified in the evidence of benefits to the community, the clear evidence for some costs and the probability of others, the Council concludes that the review has not demonstrated that the Corporation's powers to control potato supply and fix wholesale prices are in the public interest, and that the restrictions should be removed.

Removing the restrictions would have two principal impacts on potato growers supplying the fresh consumption market. It would reduce farmgate potato prices and grower incomes, causing particular hardship for growers who have recently paid for area licences or who have small scale operations. Those growers who choose to remain in the industry would also need to consider how to change their business to compete, including how best to market their produce. There may be a case for the Government to consider offering financial assistance to growers facing particular hardship and to offer business management and marketing training and advice more widely. Any financial assistance could be paid over several years to spread the fiscal impact and secured by contract to provide security for growers and their financiers.

Rice

Regulations and Proclamations under the *Marketing of Primary Products Act 1983* enable vesting of ownership of all rice grown in New South Wales in the New South Wales Rice Marketing Board (NSWRMB). They prohibit anyone other than the board and its agents from marketing such rice on either domestic or export markets. The board delegates its marketing functions to the Ricegrowers Co-operative Limited under an exclusive licensing arrangement. The co-operative also controls the production, storage and milling of rice via its six milling plants.

Review and reform activity

New South Wales commissioned a group of government and industry representatives to review the rice marketing arrangements under NCP. Completed in November 1995, the review recommended removing the NSWRMB's monopoly over domestic marketing, but retaining the export monopoly. It proposed that the Government achieve this change by repealing the State-based arrangements and establishing an export monopoly under Commonwealth jurisdiction. In April 1996, the Government extended the existing regulatory arrangements until 5 January 2004, arguing that:

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

The Council's 1997 NCP assessment and 1998 supplementary NCP assessment found that New South Wales had not implemented the recommendations of its review and, therefore, had not met its CPA clause 5 obligations in relation to domestic rice marketing arrangements. Following this assessment, a working party comprising Commonwealth and New South Wales officials, industry representatives and Council staff was established to examine Commonwealth-based options for ensuring a single export desk while removing the domestic rice market monopoly.

In January 1999, the working party recommended a preferred model to the Commonwealth Government. The model included the Commonwealth's creation of a rice export authority to manage the single desk, with the Ricegrowers Co-operative Limited holding an automatic export right for three to five years. Under the model, third parties would be able to seek export licences where this arrangement does not diminish the benefits of the single desk.

In April 1999, the New South Wales Premier agreed to the model in principle and subject to it:

- being feasible and practical and not jeopardising export premiums;

- accounting for industry arguments on the need for a transition period before implementation and a further period during which Ricegrowers Co-operative Limited would hold an exclusive export licence; and

- being agreed to by all other States.

The Premier also reserved the right to retain the existing arrangements to protect export premiums if these conditions are not satisfactorily met. The Commonwealth and New South Wales governments then further developed the model. At the time of the Council's 2000 supplementary assessment, however, the New South Wales Government had not responded to a refined proposal from the Commonwealth Government. The Council considered the State had made insufficient progress and thus recommended withholding part of the 2000-01 NCP payments due to New South Wales. On 31 August 2000, the Council was advised that the New South Wales Premier accepted the Commonwealth's proposal, subject to two minor qualifications. Consequently, the Council withdrew its recommendation to withhold 2000-01 NCP payments, but indicated that it would revisit the matter in later NCP assessments.

Following further development of the model, New South Wales agreed on 27 March 2001 to the Commonwealth Government commencing consultation on the model with other States and Territories. New South Wales requested that the consultations be based on:

- the model being in place for three to five years; and

- the Ricegrowers Co-operative Limited holding, for a transitional period, a veto over rice exports by other parties.

The Commonwealth Government subsequently consulted other States and Territories. The Commonwealth is yet to advise the Council on the outcome of these consultations or its position on the model.

In August 2003 the New South Wales Government announced that it would extend the rice vesting arrangements for a further five years beyond their expiry in January 2004.

Assessment

New South Wales is yet to fulfil its CPA clause 5 obligations relating to the regulation of rice marketing. The NCP review was completed almost eight years ago and yet the recommended deregulation of domestic rice marketing still has not occurred. This delay is partly because of the time taken by New South Wales in agreeing to explore the possibility of a Commonwealth-based reform model. More recently, delays have occurred in conducting the Commonwealth Government's consultations with the other States and Territories. The review estimated the annual cost of regulation to domestic consumers of rice at A$2–12 million per year (Government of New South Wales 1995), equivalent to A$16–96 million in the eight years since the

review. Also seriously disadvantaged are those growers who wish to make their own processing and marketing decisions, including several growers of organic rice.

The Council understands the Government will undertake a new full NCP review of the rice vesting arrangements. The Council expects New South Wales to undertake an independent and rigorous review and, if it recommends reform, to implement such reform without delay except to the extent there is a clear public interest in a reform transition against a firm timetable.

Sugar

Queensland's *Sugar Industry Act 1991* restricted competition in a variety of ways, including:

- restricting the supply of cane to land 'assigned' to sugarcane production by the Queensland Sugar Corporation on advice from local boards of grower and mill representatives;

- compelling all growers and mill owners to bargain collectively, and prohibiting growers from transferring their cane supply between mills without consent from the local boards of both mills; and

- vesting ownership of raw sugar produced in Queensland in the Queensland Sugar Corporation, thereby reserving to the corporation a monopoly on the sale of this sugar into domestic and export markets, allowing it to pool returns to mills and growers and to control sugar quality.

In addition, the Commonwealth imposed an import tariff of A$55 per tonne that effectively excluded sugar imports.

Review and reform activity

In 1995, the Commonwealth and Queensland governments commissioned a working party of government, grower, miller, marketer and user representatives to review the Act and the sugar import tariff. The working party reported in July 1996, recommending that:

- the Queensland Government:

  - retain the domestic and export monopoly, subject to the pricing of domestic sales at export price parity;

  - permit growers to negotiate individual agreements with mills and transfer their supply to other mills, when collective supply agreements expire;

  - place a 10-year moratorium on the further review of the marketing arrangements; and

- the Commonwealth Government remove the tariff on raw sugar imports.

The Queensland and Commonwealth governments endorsed the recommendations. In July 1997, the Commonwealth removed the import tariff and the corporation priced its domestic sales at export price parity. These moves, along with falls in world sugar prices, led domestic prices to fall by more than A$200 per tonne.

In November 1999, the Queensland Parliament passed the *Sugar Industry Act 1999*, which encapsulated the regulatory changes agreed with the industry and repealed the Sugar Industry Act 1991. The new Act was amended in June 2000 by the *Sugar Industry Amendment Act 2000*, which introduced further structural changes for the industry. The most important changes were:

- the transfer of the Queensland Sugar Corporation's marketing assets and liabilities to the producer-owned Queensland Sugar Limited;

- the establishment of the Sugar Authority to monitor the performance of Queensland Sugar Limited and to assume its monopoly role if the industry gives up control of the company;

- the establishment of a review of the sugar vesting arrangements by no later than 1 December 2006 (or earlier if the company requests) for completion by 31 December 2007;

- the clarification that a cane grower is able to move from a collective supply agreement to an individual agreement; and

- the transfer of the bulk sugar terminals to Sugar Terminals Limited and the distribution of shares in this company to eligible growers and millers.

The sugar industry has since faced several seasons of much reduced returns due to low world sugar prices, poor seasonal conditions and cane disease. The prospects for better returns look poor without substantial gains in industry productivity.

In 2002, the Commonwealth commissioned Mr Clive Hildebrand, Chair of the Sugar Research and Development Corporation, to assess options for improving the productivity of the industry. The Queensland State Government also commissioned the Centre for International Economics to review the effect of Sugar Industry Act 1999.

On 29 April 2003, the State Government introduced extensive amendments to the Sugar Industry Act 1999 to Parliament. The key changes:

- remove the cane production area ('assignment') system;

- allow growers to bargain with millers either individually or in one or more collectives;

- provide a voluntary system of mediation and arbitration of disputes over agreements between growers and millers;

- allow for case exemptions from vesting for the sale of sugar on the domestic market or of alternative products such as ethanol and bio-plastics; and

- remove the Ministerial direction on the export parity pricing of raw sugar sold within Australia.

If passed, these amendments would come into effect on 1 January 2004. The amended vesting arrangements will still be reviewed again under NCP in 2006.

Assessment

The Council assessed in 2002 that Queensland had substantively implemented the recommendations of the 1996 Sugar Industry Review Working Party and, therefore, had met its related CPA clause 5 obligations. The transfer of the marketing assets and liabilities of the former Queensland Sugar Corporation to Queensland Sugar Limited, and the transfer of bulk sugar terminals to Sugar Terminals Limited are relevant to CPA clause 4. This clause obliges governments, before privatising a public monopoly, to remove from it any industry regulation functions and to undertake other structural reforms necessary to establish effective competition where in the public interest.

The Queensland Government has met its CPA clause 4 obligation in relation to the privatisation of the Queensland Sugar Corporation. In particular, the regulatory functions of the corporation, retained by the Sugar Industry Act, have been devolved to either local cane production boards or the Sugar Industry Commissioner. Queensland Sugar Limited also continues to be subject to the export parity pricing rule while it retains a State monopoly on domestic raw sugar sales.

The privatisation of the bulk sugar terminals did not affect any regulatory functions. While Bulk Sugar Terminals Limited controls all sugar terminals in Queensland, the interests of growers and mills in its pricing and service standards are addressed through these growers/mills' joint ownership of the company.

Table 1.7: Review and reform of legislation regulating marketing of other agricultural products

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Dried Vine Fruits Equalization Act 1978, Dried Sultana Production Underwriting Act 1982, Dried Vine Fruits Legislation Amendment Act 1991* Dried vine fruit export control Regulations under the *Australian Horticulture Corporation Act 1987*	Equalises returns from the export of dried vine fruit; underwrites the production of sultanas; restricts the export of dried vine fruits	None.	The Acts were repealed without review. The regulations expired in early 2003. New dried fruit export licensing arrangements have minor restrictive effects and were subject to a RIS.	Meets CPA clause 5 obligations (June 2003)
New South Wales	*Marketing of Primary Products Act 1983*	Grants a monopoly to the Rice Marketing Board over domestic and export marketing of all rice grown in the State	Review by a joint government–industry panel was completed in 1995. It recommended retaining the export monopoly under Commonwealth jurisdiction and removing the domestic monopoly (and State legislation). The Commonwealth has consulted other States and Territories on a proposal to establish a national rice export authority.	Vesting arrangements extended for five years pending new review.	Review and reform incomplete

(*continued*)

Table 1.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Sugar Industry Act 1991*	Grants monopoly to the Queensland Sugar Corporation over domestic and export marketing of all sugar produced in the State; provides for local boards to control cane production areas and the allocation of cane to mills	Review by a joint government–industry panel was completed in 1996. It recommended: • retaining the domestic and export monopolies subject to export parity pricing of domestic sales; • permitting growers to negotiate individually with mills once collective agreements expire; and • removing the Commonwealth's sugar tariff.	In July 1997, the tariff was removed and export parity pricing was introduced. In November 1999, the *Sugar Industry Act 1999* was passed. This and subsequent amendments allow some scope for growers to negotiate individually with mills. New Act also involved several structural reforms of the Queensland Sugar Corporation and bulk sugar terminals.	Meets CPA obligations (clauses 4 and 5) (June 2002)
Western Australia	*Marketing of Potatoes Act 1946*	Producer licensing; production quotas; vesting of ownership and domestic marketing monopoly	Review by the Department of Agriculture completed in December 2002 recommended retaining the restrictions.	In July 2003 the Government announced that the restrictions would remain.	Does not meet CPA obligations (June 2003)

Fisheries

The commercial fishing industry is Australia's fourth most valuable food-based primary industry, after beef, wheat and milk. The landed value of the commercial wild catch increased from A$1.1 billion in 1989-90 to nearly A$2.4 billion in 1999-2000. Australia's major commercially harvested species are prawns, rock lobster, abalone, tuna, other fin fish, scallops, and edible and pearl oysters. Aquaculture production is also growing rapidly, with the value of production rising from A$188 million in 1989-90 to A$602 million in 1998-99. Aquaculture is established in all States, with farmed species ranging from pearl oysters to trout. The majority of Australian production — some A$1.5 billion in 1998-99 — is exported. The value of fish and fish products consumed domestically in 1998-99 was approximately A$1.4 billion, including imports valued at A$878 million.

Fishing is also an important recreational activity in Australia. Two main industries are involved. The Australian fishing tackle and bait industry has an annual turnover in excess of A$170 million. The recreational boating industry (of which 60 per cent relates to fishing) accounts for a further A$500 million in turnover. In addition to Australian fishers, international tourists spend over A$200 million on recreational fishing in Australia each year (FRDC 2002).

Legislative restrictions on competition

Commonwealth, State and Territory governments all regulate wild fisheries.[1] The Commonwealth Government is responsible for fisheries that are 3–200 nautical miles off the Australian coast. State and Territory governments are responsible for coastal fisheries out to 3 nautical miles, as well as estuaries and fresh water fisheries. There are Commonwealth–State agreements (offshore constitutional settlement arrangements) aimed at improving the management of certain fisheries. States and Territories regulate fish farming (aquaculture) via either general planning and environment laws or specific-purpose legislation.

Most wild fisheries regulation restricts competition. The main restrictions (occurring in an array of legislative and other instruments, including primary legislation, subordinate legislation, management plans and licence conditions) are:

- restrictions on access — entry and/or exit — via the licensing of fishers and their boats;

[1] Approximately 60 per cent of wild fish production derives from State and Territory waters. The remaining 40 per cent is caught in Commonwealth waters.

- other restrictions on access; spatial restrictions (such as closure of fisheries and depth restrictions) and temporal restrictions (such as season or weekend closures of fisheries);

- restrictions on output via total allowable catches and fishing quotas; and

- restrictions on inputs via limits on boat size and engine power or on fishing gear and methods.

Table 1.11 summarises government's progress in reviewing and reforming fisheries legislation.

Regulating in the public interest

The principal case for government regulation of fisheries was set out in the NCP review of Victoria's *Fisheries Act 1995*:

> *The general absence of well-defined property rights over fish in the sea means that competition between fishers can lead to the dissipation of any economic rents in a fishery, and ultimately the collapse in its fish population, in the absence of government regulation. Such developments can have adverse economic, social and environmental consequences. This problem, generally known as 'the tragedy of the commons', can occur where there is either unrestricted access to a community owned resource, or where either private property rights or access rights and responsibilities are incomplete or weakly prescribed. The absence of complete property rights or the existence of weakly prescribed access rights leads to market failure.*
>
> *In such situations, the actions of any one fisher, for example, in seeking to maximise his or her catch, effectively reduces the catch available to others. This situation can induce fishers to over invest in catching capacity, in order to maximise their catch and to minimise harvest time. A loss in overall economic efficiency results, along with the depletion or collapse of the resource.*
>
> *In addition to this stock externality, other externalities arise when additional fishers enter the fishery. With more and more fishers entering the fishery, a congestion externality may impact on the average costs of all fishers, raising fishing costs of all fishers. For example, vessels experience delays in ports, vessels have to wait their turn to access fishing grounds, nets become tangled, vessels can damage the equipment of other fishers, etc. In an open access fishery, individuals may fail to take full account of their own contribution to the congestion externality and the costs they impose on other fishers* (ACIL Consulting 1999a, p. 8).

There is some evidence of overfishing in Australia. The Organisation for Economic Co-operation and Development (OECD) reported that four of the

Commonwealth-managed fisheries are overfished, ten are fully fished, one is underfished and 15 are uncertain (OECD 2001).2 These observations about Australian fisheries are consistent with overseas experience. In the United States, for example, overcapitalisation and overfishing are empirically well established.

- Edwards and Murawski (1993) found that the economic benefits derived from the New England groundfish fishery could be increased by USA$150 million annually, but that this would require a 70 per cent reduction in fishing effort.

- Ward and Sutinen (1994) estimated that only one third of the 1988 fleet operating the Gulf of Mexico shrimp fishery would be required to harvest the same quantity of fish — that is, two thirds of the capital employed could be re-deployed to other uses without reducing total product.

In addition to the threats of overfishing and congestion, degradation of the marine environment and biodiversity is a risk posed by some fishing methods, and by the different values placed on fishery resources (their value as a source of seafood and other produce, their value for outdoor recreation and their value in the traditional lifestyle of some Indigenous communities).

The main objectives of fisheries regulation, therefore, are typically to:

- sustain fish stocks to maximise their economic benefits in perpetuity;

- protect marine environments and marine biodiversity; and

- distribute the benefits of the resource appropriately among commercial, recreational and Indigenous fishers;3

at minimum cost to the community.

The direction of fisheries regulatory development is towards the adoption of output controls and, where possible, property rights. The OECD Committee for Fisheries, in commenting on the appropriate direction of reform, stated:

> *… to alleviate fisheries problems it would be useful to introduce rights based management systems (e.g. transferable individual licences, individual quotas, and exclusive area user-rights). For example, individual quotas result in improved stock conservation, reduction in overcapacity and race-to-fish, and hence in overall better economic performance. However, rights based systems require governments to establish and maintain a legal framework for the rights and may increase administrative costs. Furthermore, the implementation of such systems may cause structural adjustment consequences,*

2 The OECD did not report similar evidence about State-managed fisheries.

3 Occasionally, fisheries regulation also seeks to exert export market power where the potential for such power exists.

> *including lower employment opportunities, and distributional conflicts.* (OECD Committee for Fisheries 1996, p. 2)

Some countries have moved quickly to adopt fisheries management practices based on output controls. The New Zealand Government introduced the Quota Management System in 1986. This system controls the total commercial catch from all the main fish stocks within New Zealand's 200 nautical mile Economic Exclusion Zone (Government of New Zealand 2002). More commonly, the movement towards output controls has occurred gradually, often fishery by fishery.

The OECD noted emerging evidence of the benefits of moving towards output-based regulation, indicating that the gains predicted by economic theory are achievable in practice. In the United States, where 'most fisheries can probably be characterised as overcapitalised, with too many vessels, too much gear and too much time spent at sea harvesting fish at a higher than optimal cost per unit of effort' (NMFS 1996, p. 12), the National Marine Fisheries Service found the following benefits from output regulation.

- The introduction of individual transferable quotas to the Atlantic surf clam fishery in 1990 led to a 54 per cent reduction in the fleet within two years, while total landings increased slightly. An annual resource rent of A$11 million accrued to the industry following the reform. Previously this rent was dissipated.

- The introduction of individual transferable quotas to the south east wreckfish fishery in 1992 reduced the fleet from 91 vessels to 21 within three years. While total landings declined they also became more constant throughout the year (NMFS 1996, p. 13–14).

The above evidence suggests there is substantial potential to capture significant community benefits by improving fisheries management and, in particular, by moving from input controls towards quasi-property rights approaches. The complexities of the industry, however, require reform to be based on a good understanding of the circumstances of individual fisheries.

One complexity is the multispecies fishery. In this type of fishery, different fishing methods may substantially change the proportions of the different species contained within the total catch. The most economic means of harvesting one species may yield suboptimal results for another species. A further consideration is the environmental impact of different fishing methods. Some methods may be environmentally detrimental, for example, because they increase the bycatch of noncommercial species, perhaps to levels that threaten the sustainability of those species. Other environmental problems may include the disturbance of the marine environment more generally, with negative consequences for plant and fish habitats. A range of input controls may be required, often in conjunction with individual transferable quotas, to ensure that the exploitation of the fishery optimises all relevant social values.

Fisheries management also needs to recognise possible spillover effects of changing the management of individual fisheries. These effects may occur, for example, where boats and crews displaced from one fishery by regulatory change seek alternative uses and increase pressures on other fisheries, potentially offsetting the gains from improved management in the original fishery. Governments should thus adopt a broadly based approach to fisheries management decisions, rather than take a piecemeal approach.

Tailoring controls to individual fisheries

Approaches to fisheries legislation, as well as legislative reform, must account for the considerable variability among individual fisheries. The main dimensions of this variability include the level of stocks, the seasonality of the fishery and the mobility of its fish population. The unit value of the fish species under consideration and the bycatch characteristics of the fishery are also important.

Keeping these factors in mind, it is possible to generalise about the fishing controls that are most appropriate for particular fisheries. Table 1.8 outlines how the different types of fishing control may impede market competition. It suggests the types of fishery (including examples of specific species) for which each control may be most applicable. In principle, controls that define or closely resemble property rights impose fewer restrictions on market competition. Property rights controls are not always feasible, however, and may be too costly to apply in particular circumstances.

Table 1.8 highlights a number of matters. First, while property rights (or quasi-property rights) approaches are theoretically superior, substantial practical difficulties arise where stock levels are relatively uncertain or highly variable. The setting of a total allowable catch as the basis for individual transferable quotas, for example, requires a sound knowledge of stock levels and characteristics if the total allowable catch is to be consistent with the sustainability of the resource. Added difficulties arise in determining the appropriate total allowable catch where stock levels are highly variable.

Second, the total allowable catch approach can pose substantial difficulties in multispecies fisheries because an appropriate total allowable catch for one species may be associated with an unsustainable catch of another species in the same fishery.

Third, quasi-property rights approaches are likely to entail high levels of administration, enforcement and/or compliance costs. Such costs undermine the usefulness of these approaches in managing fisheries of low value species, and possibly also small fisheries.

Table 1.8: Fishing controls and their impact on market competition

Class of control	*Impediment to market competition*	*Best suited for fisheries …*
Property rights — freehold title or tradeable leases	No necessary impediments to market competition	… where competitors can be excluded and fish do not migrate (or can be prevented from migrating) — oysters, pearl and abalone
Output controls — individual transferable quota or catch shares	Control on production levels High administration, enforcement or compliance costs	… that are single species, of high unit value and with stable and well known stock levels — rock lobster and tuna
Access controls — limited number of tradeable licences, and spatial and temporal restrictions	Possible control on output levels Possible control on inputs Possible fishery closures or seasonal closures	… that are lower value or multispecies, or where recruitment is variable, species are not well understood or stocks are depleted (meaning access controls are usually combined with input controls) — prawns and mixed trawl
Input controls — boat and/or gear controls	Restrictions on types of input Possible control on production levels Significant administration, enforcement and compliance costs	

Conversely, input controls can also be associated with relatively high administration and enforcement costs. There must be an adequate level of enforcement activity to ensure satisfactory compliance. This enforcement may require substantial effort, because the potential private gain to fishers in departing from specific input controls can be extremely significant. In addition, regulators must maintain an adequate level of surveillance of fishing practices, because there is a constant incentive to seek more productive fishing methods that were not envisaged when input controls were designed. These unforeseen methods may undermine the effectiveness of the existing controls. The design and implementation of input controls must be dynamic, therefore, and involve vigilant monitoring and frequent adjustments of the control measures.

Recovering the cost of regulation

As noted above, some fisheries controls can have substantial implementation costs, in relation to administration, monitoring and enforcement costs. In some cases, significant research costs may also be incurred in the collection of information needed to guide policy choices. Equity and efficiency considerations suggest these costs should be recovered from the regulated industry, particularly where the costs are significant.

Cost recovery is usually necessary to avoid allocative distortions, because the costs of the regulatory system are conceptually an element of the costs of production. Appropriate regulation is necessary for sustainable production in the long term and, therefore, the cost of regulation should be considered part

of the cost of producing the fishery's output. Failure to reflect regulatory costs in the final price of the product would distort market competition among the products of the fishery and its competitors (whether the competitors are the products of other fisheries or nonfish products). The design of the cost recovery mechanism must also be efficient and equitable, ensuring appropriate cost sharing among those who fish the fishery and taking steps to minimise the costs incurred.

Balancing the different uses of a fishery

Achieving an appropriate balance among different potential uses of the fishery is a further challenge. The two main uses of a fishery are generally commercial and recreational fishing. Each can be a significant commercial activity and each can exert substantial environmental pressure on a fishery. The extent to which these different uses translate into competing demands varies among fisheries, with some fisheries being primarily attractive to one or the other use. Deep sea fisheries, for example, may be less accessible to recreational fishers and thus less attractive. For most fisheries, however, the two types of demand will compete strongly.

Balancing competing uses is also complicated by differences between commercial and recreational fishing in the notion of 'output'. For the former, output is measured by the value of fish landed, while a substantial part of the total output of recreational fishing derives from the intrinsic (entertainment) value of participating in the fishing and associated activities. It is difficult to quantify the financial value of intrinsic outputs, complicating the task for governments of achieving an equitable balance between the sectors. For some fisheries, the protection of Indigenous fishing rights is also an important element of the balance that governments must strike in managing competing interests.

While these issues are significant for the overall regulation of fisheries, they are unlikely to raise substantive NCP questions. The key competition questions revolve around ensuring the conditions for nondiscriminatory competition, within an access and sustainability framework that guides the long-term management of the fishery.

The need for careful analysis in regulation-making

Making the right choice of restriction or combination of restrictions is crucial to sound fisheries management. The consequences of poor choice include:

- endangering the fishery, leading to a degraded environment, loss of livelihood for fishers and loss of consumers' preferred choice of fish product;
- inhibiting technological changes that may offer improved returns to fishers and better value fish products to consumers; or

- impeding the entry of new fishers and forgoing new investment in regional economies.

Fisheries differ substantially, which means careful analysis must underpin the choice of management policy or policies to meet the requirements of individual fisheries. The complexity of fisheries management and controls suggests that primary legislation should provide for management policies to be developed via NCP-like processes to ensure regulations meet the needs of individual fisheries while placing least restriction on the activities of fishers.

Benchmark for review and reform

Primary legislation for fisheries management makes available a 'toolkit' of controls, but generally does not of itself apply these controls. The application of fisheries management controls in combinations most suited to the circumstances of particular fisheries is usually the province of secondary or subordinate legislation and other regulatory instruments often referred to as management plans. This lower tier of regulation is extensive and, as noted above, can be complex to analyse. It is necessarily subject to regular review and revision in response to challenges such as new information, natural stock variation and technological advances.

In this light, the Council has adopted the following benchmark for assessing compliance with CPA clause 5 for fisheries management regulation.

- the review of primary fisheries legislation is complete, and recommendations for specific reforms to this legislation implemented, except where declined on reasonable public interest grounds;

- where an NCP review recommends further review of a specific issue relevant to competition, the further review has been completed and the government has announced a firm implementation timetable for reform (if any); and

- a public interest test derived from that required by CPA clause 5 is built into the normal processes of review and revision of subordinate fisheries legislative instruments.

Commonwealth

Commonwealth fisheries contribute about 20 per cent of fisheries production, with major fisheries being the Northern Prawn, Southern Bluefin Tuna and the South East Trawl and Non-trawl fisheries. In the Torres Strait, the key species taken are prawn, tropical rock lobster, Spanish mackerel and

barramundi. The Commonwealth's principal fisheries regulation is the *Fisheries Management Act 1991*[4] and the *Torres Strait Fisheries Act 1984*.

Fisheries Management Act

The Fisheries Management Act enables the making of management plans for Commonwealth-managed fisheries and of arrangements with the States and the Northern Territory for managing specific fisheries under the Offshore Constitutional Settlement. These management plans set out management objectives and the measures by which such objectives are to be pursued. Many measures may restrict competition between fishers — for example, licensing, total allowable catches, individual transferable quotas, area closures and controls on boats and gear. In addition, the transfer of fishing rights can be restricted.

Review and reform activity

A committee of Commonwealth officials and industry representatives reviewed the Fisheries Management Act. Completed in September 2002, the review identified circumstances in which all existing restrictive fishery controls available under the Act may be in the public interest. It presented case studies of the three most important Commonwealth fisheries — the input-controlled Northern Prawn fishery and the output-controlled Southern Bluefin and South East Trawl fisheries — which confirmed the net benefit of the restrictions applied in each case.

The review recommended that the Commonwealth Government retain all existing restrictions available under the Act, subject to using the following controls as temporary measures only while longer term measures are developed and implemented:

- competitive total allowable catches; and
- nontransferable fishing rights.

It also confirmed that individual transferable quotas are the preferred management tool where it is feasible to set and enforce practical total allowable catches.

The Commonwealth Government referred the report to the wider review of Commonwealth fisheries policy. The Federal Fisheries Minister, Senator Ian

[4] Related legislation is the *Fisheries Administration Act 1991*, the *Fisheries Legislation (Consequential Provisions) Act 1991*, the *Statutory Fishing Rights Charge Act 1991*, the *Fisheries Agreements (Payments) Act 1991*, the *Fishing Levy Act 1991*, the *Foreign Fishing Licences Levy Act 1991*, and the *Northern Prawn Fishery Voluntary Adjustment Scheme Loan Guarantee Act 1985*.

Macdonald, tabled a report of this policy review, *Looking to the future*, in Parliament on 25 June 2003. The report noted that:

- The Commonwealth Government, in consultation with relevant stakeholders, will prepare a policy paper to guide the fishing industry on how the management of Commonwealth fisheries pursues the objective of maximising economic efficiency while ensuring consistency with the principles of ecologically sustainable development.

- The Australian Fisheries Management Authority will continue to provide regulatory impact statements when developing statutory management plans.

- The Commonwealth Government will seek to amend the Fisheries Management Act to clarify the requirement that management plans explicitly include objectives consistent with those under the legislation, and include criteria and timeframes for performance review.

- The Australian Fisheries Management Authority will complete fisheries management plans for all major fisheries as soon as practicable, as required under the Fisheries Management Act.

- The Australian Fisheries Management Authority will continue to implement the Government's cost recovery policy for Commonwealth-managed fisheries.

Assessment

The Council assesses that the Commonwealth Government has met its CPA clause 5 obligations in relation to the Fisheries Management Act. All of the Act's significant restrictions on competition were found to be in the public interest. Three case studies confirmed that competition restrictions applied via statutory management plans are in the public interest; more generally, such regulation is subject to the public interest test via regulatory impact statements and regular reviews.

Torres Strait Fisheries Act

The Torres Strait Fisheries Act regulates all fishing within the Australian jurisdiction of the Torres Strait Protected Zone (established under the Torres Strait Treaty between Australia and Papua New Guinea). Its objective is to manage fishing in the zone with regard to the traditional way of life and livelihood of traditional inhabitants, including those inhabitants' rights in relation to traditional fishing. The Act imposes a variety of restrictions on commercial and traditional fishing.

Review and reform activity

A committee of Commonwealth and Queensland government officials and representatives of related industries and communities reviewed the Torres Strait Fisheries Act. Presented to the Torres Strait Protected Zone Joint Authority in March 2000, the review report considered the Act's restrictions generally and as applied to the specific fisheries. It recommended:

- retaining the existing restrictions, including licensing and Ministerial powers to regulate fishing;
- setting a new statement of objectives for the Act; and
- maintaining the distinction between community and commercial fishing.

The authority referred the review findings and recommendations to the Torres Strait fisheries consultative and advisory committees for consideration.

Assessment

The Council assesses that the Commonwealth Government has met its CPA clause 5 obligations in relation to the Torres Strait Fisheries Act, because all key restrictions have been found to be in the public interest.

New South Wales

The annual commercial fishing catch in New South Wales is worth $70 million. The main commercial fisheries are the ocean prawn trawl, estuary general finfish, ocean haul fishery and abalone. In addition, the aquaculture sector, mainly oyster, is worth about $40 million annually (CIE 2002).

The primary legislation regulating fishing in New South Wales fisheries is the *Fisheries Management Act 1994*.

Review and reform activity

The State Government commissioned the Centre for International Economics to review the Act under the supervision of an inter-agency officials committee. Released in April 2002 the review concluded that:

- many of the Act's provisions restrict competition, but collectively their benefits exceed their costs, and fishery management objectives can only be achieved by restricting competition; and

- the benefits of two restrictions — fish receiver registration fees and licensing for recreational charter fishing boats — may not exceed their costs, and should be evaluated further.

The review did not evaluate the regulations and management plans made under the Act, which apply 'packages' of restrictions to individual fisheries, but found the Act and other long established requirements — such as the requirement for regulatory impact statements under the *Subordinate Legislation Act 1989* — provide appropriate planning, advisory, consultation and review processes which give reasonable confidence that the social benefits of regulatory packages that apply to each fishery exceed their costs.

The review also found that moneys collected from fishers only cover a fraction of the funds spent by the NSW Department of Fisheries.

It recommended amending the objects of the Act to recognise social and economic benefits.

Fish receiver fees are being further examined as part of a wider review of the cost recovery framework for commercial fishing. The cap on recreational charter fishing boat licences, and the nontransferability of licences for part-time operators, will be examined in the context of long-term management arrangements for the charter boat industry.

The State Government amended the objects of the Act as recommended via the *Fisheries Management Amendment Act 2001*.

Assessment

The Council assesses that New South Wales is still to fulfil its CPA clause 5 obligations arising from the Fisheries Management Act. Specifically, the Government needs to complete the review and reform of:

- the recovery of fishery management costs from users; and
- the licensing of the charter boat fishery operators.

Victoria

Victoria's fisheries produce about A$130 million of seafood annually (DPIV 2003). The major commercial fisheries in Victoria are abalone, scallops, rock lobster, and bay and inlet scalefish.

The principal instrument of fisheries regulation in Victoria is the *Fisheries Act 1995*. The Act generally limits to current licence holders the right to commercially harvest fish stocks. Supporting Regulations specify management controls such as closed seasons, minimum sizes and gear restrictions. The Act also regulates recreational fishing and aquaculture.

Review and reform activity

The Victorian Government retained ACIL Consulting to independently review the Fisheries Act. The most important recommendations of the review, which reported in 1999, were that the Government:

- review alternatives to nontransferable fishing licences;
- grant access licences for longer than one year;
- introduce full recovery of fishery management costs and consider introducing royalties or rent taxes;
- move from input controls to output controls (quota) in the rock lobster fishery; and
- remove minimum and maximum quota holding restrictions in the abalone fishery.

The State Government responded to the recommendations in December 2001. It accepted all recommendations except that to grant longer term access licences.

The Government is well advanced in implementing the accepted recommendations. It introduced quota into the rock lobster fishery via the Fisheries (Rock Lobster and Crab) Regulations 2001. The Act is to be amended in the Spring 2003 session of Parliament to implement most of the other recommendations, including removing quota holding and transfer restrictions in the abalone fishery. Other recommendations are being implemented through the development and review of fishery management plans. The main recommendations and the State Government's response are shown in table 1.9.

Table 1.9: Review and reform of the Fisheries Act (Victoria)

Fishery	*Review recommendation*	*Government response and reform*
All	Review alternatives to nontransferable fishery licences.	**Accepted**. Nontransferable licences are being phased out as licence holders exit and fisheries convert to transferable licences under fishery management plans.
	Consider the allocation of new licences and quota by mechanisms such as auctions, tender or ballots.	**Accepted**. Allocation guidelines will be included in fishery management plans.
	Grant access licences for longer periods than one year and make them automatically renewable, subject to specific conditions.	**Rejected** • Access licences are already automatically renewed subject to specific conditions. • Fishery management plans, which run for four to five years, give fishers a stable regulatory environment. • Annual licences allow more efficient management of fees and levies.
	Review existing limits on the number of persons employed.	**Accepted**. Employee limits are being removed by amendment to Regulations in all individual transferable quota (ITQ) fisheries (except abalone, where it is necessary to assure adequate compliance).
	Introduce full cost recovery, subject to formal policy development.	**Accepted**. Cost recovery will be phased in from April 2004.
	Consider the introduction of royalties or rent taxes.	**Accepted**. Royalties to be introduced once full cost recovery is achieved.
Abalone	Retain the individual transferable quota (ITQ) management system.	**Accepted**. No reform required.
	Remove or reduce minimum and maximum quota holdings and transfer restrictions.	**Accepted**. Legislative amendments are scheduled for mid-2003.
Rock lobster	Consider the introduction of an ITQ system.	**Accepted**. Quota system implemented by the Fisheries (Rock Lobster and Crab) Regulations 2001 (November).
	Remove limit on pots per boat if quota system is adopted, and remove minimum pot holdings subject to enforcement cost implications.	**Accepted**. Implementation is being considered via the development of the Fishery Development Plan due for release mid-2003.
Scallop	Retain the ITQ management system.	**Accepted**. No reform required.
	Remove the prohibition on shucking scallops at sea.	**Accepted in principle**. The scallop fishery is managed jointly by the Commonwealth and Tasmanian governments. Jurisdictional issues are to be resolved.
Bay and inlet scalefish	Retain input controls but evaluate alternatives such as quota for some species.	**Accepted**. Evaluation of alternatives for species such as black bream is occurring as part of development of the Bay and Inlet Fishery Management Plan.

Assessment

The Council assesses that Victoria, while having made considerable progress, is still to complete its CPA clause 5 obligations arising from the Fisheries Act. In particular, important reform recommendations accepted by the Government remain outstanding, including:

- introducing the full recovery of fishery management costs, which is due to begin in April 2004;
- removing employee limits in quota-managed fisheries other than abalone;
- removing minimum and maximum quota holdings and transfer restrictions in the abalone fishery, for which legislative amendments are scheduled for mid-2003; and
- removing pot limits in the rock lobster fishery, which is a change being considered in the development of the rock lobster fishery management plan.

The Council is otherwise satisfied that the remaining restrictions are to remain are in the public interest. The review was independent, robust and comprehensive. As noted above, Victoria did not accept one recommendation of its review — to grant access licences for longer periods than one year and make them automatically renewable, subject to specific conditions — but the Council is satisfied with the Government's reason for this decision. While the review argued that annual renewal involves additional transaction costs and, despite being largely automatic, increases uncertainty, the Government argued that:

- access licences are already automatically renewable subject to specific conditions; and
- annual renewal allows more efficient management of fee and levy structures.

In principle, longer term licences are preferable because they reduce uncertainty, fostering investment in productivity improvements and strengthening the stake of licence holders in managing fisheries sustainably. However, annual licences that are automatically renewable may be regarded by licence holders, investors and financiers as having a similar degree of security to that of longer term licences where a government acts as if annual licences are longer term (for example, where a government buys back licences to reduce access, rather than merely refusing to renew them).

Queensland

The gross value of fish harvested in Queensland is about A$295 million per year. In addition, the production of fish by the aquaculture industry is valued at about A$55 million per year.

Queensland's principal fisheries legislation is the *Fisheries Act 1994*. The Act prohibits the harvesting of fish except by those holding an authority issued under the Act. It allows the imposition of measures to control fishing effort and to protect habitat and biodiversity.

Review and reform activity

An interdepartmental review committee, assisted by ACIL Consulting and a stakeholder reference panel, completed a review of the Act and its Regulations in June 2001. The key recommendations were to:

- include the principles of ecologically sustainable development in the Act's objectives;
- replace a variety of vessel and occupational licences with a single long-term fishery access licence;
- allow the temporary transfer of licences and quota (permanent transfers were generally already possible);
- increase the recovery of fishery management costs from fishers and reduce cross-subsidies between fishers;
- embed NCP principles in the ongoing fisheries management review cycle;
- reduce fishing effort in the East Coast Trawl fishery through means other than the 'two-for-one' boat replacement policy; and
- remove pot holding limits, minimum quota holdings and quota transfer approvals in the Spanner Crab fishery.

The review also recommended that the Government review controls in a variety of other fisheries to more efficiently and effectively reduce latent effort. The main recommendations, and the State Government's response, are shown in table 1.10.

Table 1.10: Review and reform of the Fisheries Act (Queensland)

Fishery	*Review recommendation*	*Government response and reform*
All	Include the principles of ecologically sustainable development in the Act's objectives.	**Accepted**. The Act was amended accordingly in late 2002.
	Allow the temporary transfer (leasing) of fishing rights.	**Accepted**. The Act was amended accordingly in late 2002.
	Increase the recovery of fisheries management costs from fishers and reduce cross-subsidies between fishers.	**Accepted in principle**. A major review of cost recovery and licensing is expected to be completed in 2004.
	Replace vessel, fisher, assistant fisher and crew licences with a single access licence of a term longer than one year.	**Partially accepted in principle**. A major review of cost recovery and licensing is expected to be completed and legislative change made in 2004. Annual licensing is to be retained for administrative simplicity.
	Embed public interest analysis in the ongoing cycle of fisheries regulatory review and reform.	**Accepted**. The Government has adopted a statement of principles for fisheries regulatory design, and has allocated responsibilities to agencies for assessing regulatory proposals against these principles and the public interest test.
East Coast Trawl	Reduce fishing effort through means other than the 'two-for-one' boat replacement policy.	**Accepted**. In January 2001, the Government capped access to this fishery, granted fishers tradable 'effort units', and replaced the 'two-for-one' boat replacement policy with a buy-back scheme.
Spanner Crab	Remove pot holding limits, minimum quota holdings and approvals for quota transfer.	**Partially accepted**. Quota transfer restrictions removed (Fisheries Amendment Regulation No. 4 2002). Minimum quota holding proposed for removal in 2004. Pot holding limits retained to avoid stock depletion in specific areas.
Beche-de-mer	Remove the requirement that licence holders be present during fishing, and the restrictions on licence and quota transfers.	**Accepted**. Restrictions removed by the Fisheries Amendment Regulation No. 4 2002.
Reef line	Review management to cap and reduce fishing effort more efficiently and effectively than do the existing input controls.	**Accepted**. The Government is consulting on proposed changes to the management of the Reef Line Fishery, which are to be implemented in late 2003.
Finfish and other	Review management to cap and reduce latent effort.	**Accepted**. The Government has scheduled a review to start in late 2003 and, in the interim, has introduced total allowable catches for tailor and spotted mackerel, and prohibited net fishing for the latter.

The Government accepted most of the recommendations and implementation is well under way. In early 2001, the Government introduced an effort cap and transferable effort units to the East Coast Trawl fishery, with a buy-back scheme replacing the 'two-for-one' boat replacement policy. In early 2002, the Government initiated reviews of cost recovery and licensing, and expects to implement the outcomes in 2004. In late 2002, the Act was amended to implement the review recommendations on its objectives and the temporary transfer of licences and quota. Also in 2002 the Government removed restrictions on quota transferability in all quota-managed fisheries and removed the requirement the holders of licenses for the Beche-de-mer fishery be present during fishing operations. The Government has also released for consultation proposed new management plans and accompanying regulatory impact statements for various fisheries.

Assessment

The Council assesses that Queensland is advanced in meeting its CPA clause 5 obligations in relation to the Fisheries Act, but has not yet completed its review and reform activity in this area. Specifically, Queensland is yet to complete the following recommended reforms:

- replacing the variety of vessel and occupational licences with a single fishery access licence — implementation is subject to a further review that is under way;

- increasing the recovery of fishery management costs from fishers and reducing cross-subsidies between fishers — implementation is subject to a further review that is under way; and

- removing the minimum quota holding for the Spanner Crab fishery — proposed to be removed in 2004 subject to the preparation of and consultation on a regulatory impact statement.

The review also recommended removing the need for prior approval of quota transfers because this restriction is not necessary to maintain the quota register. The Government argues that prior approval is necessary to prevent persons convicted of offences under the legislation from avoiding suspension of their quota by transferring the quota to an associated person or entity. It is not clear to the Council at this point whether this is sufficient grounds for retaining prior approval of transfers. The Council will discuss this further with Queensland.

The Council is otherwise satisfied that the remaining restrictions on competition are in the public interest because the NCP review took independent advice and was robust and comprehensive.

The Government will have met its obligations when it completes the outstanding reforms or demonstrates a public interest case for retaining an underlying restriction on competition.

Western Australia

Commercial fishing, including pearling and aquaculture, contributes more than A$1 billion to the Western Australian economy. Annual fisheries exports are valued at more than A$500 million. The fishing industry provides employment for more than 5000 people (Department of Fisheries 2003). Western Australia regulates its fisheries principally via the *Fish Resources Management Act 1994* and the *Pearling Act 1990*.

Fish Resources Management Act

The Fish Resources Management Act provides a framework for the management of Western Australia's wild fisheries and aquaculture. Most of the specific restrictions are imposed by subsidiary legislation such as Regulations, management plans, notices and licences.

Review and reform activity

The Fish Resources Management Act and subsidiary legislation were subject to two reviews. All parts of the legislation (other than those relating to the processing of rock lobster) were reviewed by the Department of Fisheries. Completed in December 1999, this review recommended that the Government:

- integrate NCP principles into the ongoing fisheries management review cycle;
- in the rock lobster fishery:
  - commission an independent update of earlier work on the net benefits of moving to an output-based management regime;
  - in the interim, remove the minimum and maximum limits on pot holdings, and separate pot licences from boat licences; and
- in other fisheries, retain existing restrictions on competition for now because the costs and risks of change outweigh any gains from moving to more efficient arrangements.

The State Government announced its response to the recommendations in March 2002. As indicated, it removed the 150-pot maximum limit on rock lobster pot holdings from July 2003. It is also preparing an amendment to regulations to decouple pot entitlements from boat licences. The existing controls on this fishery will otherwise remain until at least December 2006, while the Department of Fisheries and the Rock Lobster Industry Advisory Committee review the appropriateness of moving to output controls.

In relation to other fisheries, the Government announced that it would review controls on licence numbers and transferability by the end of 2003 and implement a new framework by December 2004. It has completed reviews of these provisions in respect of the Kimberley gillnet and barramundi fishery and the south west trawl fishery, and conducted a similar review for the south coast estuarine fishery. It is scheduling reviews of the remaining plans over the next 12–18 months. The Department of Fisheries has developed and implemented an NCP assessment and compliance report for use with all proposed regulatory initiatives and reviews.

Those parts of the legislation relating to rock lobster processing were separately reviewed by ACIL Consulting, which reported in December 1998. This review recommended that the Government:

- remove limits on the number of processing licences, and convert existing 'restricted' processing licences to 'unrestricted' licences; and
- allow licence holders to establish facilities at multiple locations.

In March 2002, the Government announced a partial acceptance of the recommendations. From 1 July 2003, licences for processing rock lobster for domestic market consumption are unlimited, and holders of 'unrestricted' processing licences may operate multiple receival facilities. The processing of rock lobster for export remains restricted, but this restriction will be reviewed again in five years.

In June 2003 the Department of Fisheries concluded a review of the regulation of the aquatic tour industry under the Act. Entry to the industry was restricted from June 2001 through the allocation of transferable licences to operators incumbent at September 1997 but the Government had not previously evaluated this and related restrictions under CPA clause 5. The review recommended retention of the restrictions as a cautious management approach is required until scientific analysis of the impact of the industry on the fishery is available.

Assessment

The Council assesses that Western Australia has not completely fulfilled its CPA clause 5 obligations arising from the Fish Resources Management Act. While the Government removed some restrictions on competition, it retained other important restrictions without making a public interest case.

First, the Government has not satisfactorily explained its decision to retain the input-based rock lobster fishery controls until at least December 2006. It has argued that moving to output-based fishery controls before this date is extremely risky because of problems related to compliance and industry culture. It has not substantiated such claims however. Until the Government decides whether and how output-based controls are to be introduced, investment and innovation in the industry — and, consequently, the

industry's contribution to the State — are likely to be lower than they otherwise would be.

Second, the Government has not provided adequate evidence that limiting the licences for processing rock lobster for export is in the public interest. Licensing of the processing sector is important for maximising compliance with rock lobster fishery controls and, therefore, for assuring the long term yield and sustainability of the fishery. It is not clear, however, why this objective necessitates limiting the number of export processing facilities.

Third, the review of aquatic tour regulation did not adequately evaluate less restrictive alternatives to limiting operator numbers. It claimed that unlimited entry would almost double the number of operators, leading to reduced operator viability, increased catch rates and increased fishery management costs. However, the analysis of operator numbers was inadequate, based merely on expressions of interest received, which is likely to overstate actual entry. Further, catch effort can be controlled at relatively low cost and without significantly restricting competition by such measures as:

- adjusting bag and size limits, including setting specific limits for aquatic tours; and
- imposing a levy on aquatic tour customers.

Unlimited entry is unlikely to threaten the viability of most operators, and fishery management costs can be recovered through licence fees. Finally, New South Wales is the only other jurisdiction to limit the number of aquatic tour operators, and this is being reconsidered following the NCP review of New South Wales' Fisheries Management Act.

Pearling Act

The Pearling Act regulates the supply of cultured pearls from Western Australia. Most pearls are exported. The industry consists of three main sectors: the wildstock harvesting sector, the hatchery sector and the farming sector. The Act's restrictions on competition are many and often complex but the key restrictions are that:

- the volume of wildstock harvested is limited by a total allowable catch and associated individual transferable quota;
- access to pearl oyster wildstock and cultivation is restricted to holders of pearling licences with at least 15 quota units;
- the volume of hatchery-produced oysters is limited by individual transferable quota (known as hatchery quota/options);

- entry to the hatchery sector is restricted to holders of hatchery licences with a pearling licence or a commercial relationship with a pearling licence holder;
- export sales of hatchery spat and oysters are prohibited;
- hatchery-produced oysters must be no greater than 40 millimetres when sold to pearl farms; otherwise, they are deemed to be wildstock and subject to wildstock quota;
- entry to the farming sector is restricted to holders of pearl farming leases also holding either a pearling or hatchery licence;
- oysters transferred to a pearl farm become the property of the farm lease holder; and
- foreign ownership of licence/lease holders is prohibited.

In addition, the executive director of the Department of Fisheries has considerable discretion in exercising responsibilities such as approving entitlement transfers. There is no administrative tribunal to review decisions of the executive director.

Review and reform activity

The Government commissioned the Centre for International Economics to review the Pearling Act. Completed in November 1999, the review advocated substantial regulatory change. Specifically, it recommended:

- removing the minimum limit on holdings of pearling quota;
- decoupling pearl farming licences from pearl fishing licences;
- auctioning temporary increases in wildstock quotas;
- removing hatchery quotas without delay;
- codifying in Regulation the criteria for fishery management decisions; and
- establishing an independent review tribunal.

On 25 March 2002, the Minister for Agriculture, Forestry and Fisheries announced that the Government had accepted most of the recommendations, but not those to remove limits on hatchery quotas without delay and to auction temporary increases in wildstock quotas.

The hatchery policy expires in December 2005. The Government has formed a steering committee to develop over the next two years a new policy for determining and allocating hatchery quota. According to the Minister:

> *The Government is taking a more measured approach to deregulation that will lead to the implementation of a new hatchery policy.*
>
> *The aim will be to free-up access to hatchery production of shell to new entrants and provide for allocation through market mechanisms, possibly by auction, after 2005.* (Chance 2002)

The Government has also agreed to review the management of wildstock quota in 2005.

The State Government is now developing new pearling legislation, which it expects to introduce to Parliament in the autumn 2004 session. This legislation will decouple pearl farm licences from fishing licences and remove other minor restrictions. During its development of the legislation, the Government will review the 15-quota unit minimum holding for pearling licensees.

Assessment

The Council assesses that Western Australia has not adequately fulfilled its CPA clause 5 obligation in relation to the Pearling Act. Specifically:

- the Government has not provided sufficient evidence for continuing to restrict the hatchery production of pearl shell via hatchery quota until at least December 2005 when the current policy expires; and
- other reforms recommended in November 1999 will not be legislated until 2004 at the earliest.

The first point needs further explanation. The 1999 review by the Centre for International Economics found no clear net public benefit from retaining the hatchery policy. While it was also not clear that removing hatchery quotas would bring a significant gain, the review noted that the NCP presumption in favour of competition should prevail.

In announcing the Government's decision to retain hatchery quota, the Minister said this would 'ensure the protection and growth of valuable export markets through continued regulation of supply levels and quality controls' (Chance 2002).

The Government further argued, in responding on 11 June 2002 to questions by the Council, that:

> *The pearling industry is currently facing an extremely difficult trading environment with the price of pearls falling significantly over the past 12 months. This is due to both increases in supply and decreases in demand resulting from unfavourable economic conditions in world markets.*

> *Given the relatively high risk of deregulation to all industry stakeholders and without a clear case that the public benefits of deregulation exceed the costs, the current hatchery policy is to remain in place until the end of 2005.*

The Government's decision relies on a Pearl Producers Association submission to the NCP review of the Act. This submission, prepared by ACIL Consulting (now ACIL Tasman), estimated an annual benefit of the hatchery quotas of A$16–25 million, with a most likely annual value of A$21 million (ACIL 1999b, pp. 11 and 98). However, the assumptions underpinning this claimed net benefit are questionable.

First, the submission argued that the existing restrictions have slowed the rate of growth of supply, notwithstanding that 'supply has effectively been determined by non-regulatory factors' because 'maximum potential supply (estimated to be around 720 kan) is above the current levels of supply (around 530 kan in 1997) and quotas will not become binding for a number of years yet' (ACIL 1999b, p. 7). Moreover, the submission proposed that quota generally be set above existing levels of supply, to allow for market expansion.

Second, the submission argued that the existence of the quota helps maintain the scarcity premium of current prices via its impact on expectations of future demand growth.

> *It further fosters the perception that the supply of Australian South Sea pearls to world markets is constrained to grow at a rate which can be absorbed by the market without eroding prices received to such an extent that aggregate revenues will begin to fall.* (ACIL 1999, p. 15)

ACIL cited a study that concluded that wholesale pearl buyers believe that the quota system constrains the supply of Australian pearls (ACIL 1999b, p. 41). In addition, ACIL cited the experience of other countries (Japan, China, Tahiti) where major supply increases were associated with sharp declines in price, leading to falls in aggregate revenue (ACIL 1999b, p. 55). It is not clear, however, why such an expectations effect would endure beyond the short term when, as acknowledged in the submission, the real constraints on the supply of Australian pearls are nonregulatory in nature.

Hatchery regulation may be the more risky course if it hinders Australian producers (other than the dominant few) from achieving the scale economies needed to meet the declining prices that result from increased pearl supply in other countries (an increase often assisted by the adoption and expansion of hatchery technology). If prices continue to decline, as seems likely, and the Government decides in 2005 to ease hatchery restrictions, then the four-year lead time for producing quality pearls means that smaller and new Western Australian producers may not reach efficient production scale until 2010.

Turning to wildstock quota, the Council is now satisfied with the evidence for continuing the allocation of temporary increases in total allowable catch to existing quota holders. This practice is similar to that in other output-based fishery management regimes, where quota is specified not as an absolute

tonnage but as a relative share in a total allowable catch, which is adjusted over time. This approach has lower transaction costs than those of the alternative of auctioning and buying back quota, and improves quota holders' incentives to minimise the impact of their operations on the fishery.

South Australia

The gross value of production from South Australia's commercial fisheries was A$166.8 million in 1999-2000 (PIRSA 2002). The major commercial marine species fished in the State are prawns, rock lobster, abalone, whiting, snapper, garfish, yellow-eye mullet, squid and shark.

South Australia's principal fisheries legislation is the *Fisheries Act 1982* — the oldest major piece of fisheries legislation in Australia. The Act provides for the typical variety of access, input and output controls.

In addition, South Australia has regulated parts of the industry via the *Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987* and the *Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987*. These Acts provide for the surrender or cancellation of access licences to reduce fishing effort, and for compensation of those leaving the fishery.

Review and reform activity

The review panel of officials appointed to review the Fisheries Act reported in October 2002. The panel found that most restrictions imposed by the Act are in the public interest. The exceptions were:

- prohibitions on any person from holding more than one fishery licence;
- prohibitions on persons other than vessel masters from holding fishery licences;
- prohibitions on corporate and foreign ownership of fishery licences;
- licence terms of one year;
- prohibitions on permanent transfers of quota;
- minimum and maximum quota holdings;
- some personnel limits;
- winter closure in the Southern Zone rock lobster fishery; and
- various restrictions in the Blue Crab fishery.

The panel recommended that the Government:

- remove the prohibition on any person from holding more than one fishery licence;
- further review:
  - the prohibition in the marine scale fishery on persons other than vessel masters from holding fishery licences;
  - issues such as the case for stronger property rights, licence tenure, corporate and foreign ownership of commercial fishing licences, and permanent transfer of quota; and
- refer other restrictions in specific fisheries to the respective industry consultative committee.

In November 2002, the Government released a green paper seeking comment on possible changes to the Act. It intends, after considering submissions, to prepare a statement of Government policy on fisheries, release this statement for further consultation, and introduce amendments to the Act in the 2003 spring session of Parliament (expecting the Act to take effect on or after 1 July 2004). Regulations will then need to be reviewed.

The South Australian Government has repealed the Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act and intends to repeal the Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act on reaching a settlement with the remaining licensee.

Assessment

The Council assesses that South Australia has fulfilled its CPA clause 5 obligations in relation to the Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act, but not such obligations in relation to the Fisheries Act and the Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act. The latter two Acts contain competition restrictions that are not in the public interest, but the Government is still to complete reform.

Tasmania

The gross value of Tasmania's marine production reached over A$189 million in 1996-97, of which the wild fisheries accounted for 58 per cent of value and marine farming accounted for the remaining 42 per cent (DPIWE 1999). Tasmania's wild fisheries are dominated by the two relatively low volume and high value fisheries: abalone and rock lobster. The scalefish sector has a gross annual value of about A$10 million. The marine farming sector has exhibited rapid growth. Production of Atlantic salmon dominates the value of marine

farming output, but oysters and mussels are important products in their own right.

The major Tasmanian Acts governing fisheries are the *Living Marine Resources Management Act 1995*, the *Marine Farming Planning Act 1995* and the *Inland Fisheries Act 1995.*

Living Marine Resources Management Act

The Living Marine Resources Act prohibits commercial marine fishing, marine farming, fish handling and processing without a licence, for which an annual fee is payable. The Act allows the closure of fisheries and, via management plans, the imposition of controls such as quota, size limits, gear specifications and unloading restrictions.

Review and reform activity

A group of officials and a community representative, led by an independent chair, reviewed the Act, reporting in April 2000. The review was limited to the Act because all related subordinate regulation (in the form of management plans and other rules) had been introduced after the Act and thus had already been reviewed via the regulatory impact statement process required by Tasmania's *Subordinate Legislation Act 1992*. The review found all of the Act's restrictions on competition are in the public interest, so recommended their retention.

Assessment

The Council assesses that Tasmania has fulfilled its CPA clause 5 obligations in relation to the Living Marine Resources Management Act.

Inland Fisheries Act

The Inland Fisheries Act prohibits commercial freshwater fishing, fish farming and fish hatchery activities without a licence. Those wishing to operate private fisheries, and those who wish to sell, process or treat fish, must be registered.

Review and reform activity

The review of the Inland Fisheries Act, conducted by a panel of government, industry and community representatives, was completed in August 1999. The panel recommended that the Government retain the various licensing, registration and conduct restrictions, but also:

- abolish the assistant fisher's licence, making commercial fishers responsible for regulatory compliance by their employees;
- replace separate registrations for fish dealers and importers with a generic registration for those who buy or sell certain kinds of fish; and
- include in licences for fish farming and private fisheries the permission to possess fertilised salmonid ova.

The Government implemented these recommendations through amendments to the Act and changes to the respective licences.

Assessment

The Council assesses that Tasmania, having reviewed the Inland Fisheries Act and removed those competition restrictions not in the public interest, has met its related CPA clause 5 obligations.

Marine Farming Planning Act

The Marine Farming Planning Act prohibits marine farming outside of declared zones and provides for the Minister to allocate area within declared zones to persons wishing to engage in marine farming. Under the Act orders may be made in response to threats to farming operations and public health and safety.

Review and reform activity

A group composed of officials and a community representative, led by an independent chair, reviewed the Act and reported in April 2000. It found that all restrictions contained in the Act are in the public interest and thus recommended their retention.

Assessment

The Council assesses that Tasmania has not met its CPA clause 5 obligations in relation to the Marine Farming Planning Act. In particular, the Council considers that the Government has not adequately demonstrated a public interest case for retaining the Minister's discretion to allocate water area via leases.

The Act (s. 53) provides that the Minister may decide the method of allocating a lease and the criteria for selecting a person who is to be allocated a lease. The review considered the alternative of requiring the allocation of water area by tender, but argued that this:

- would likely lead to reduced economic benefits because there would be no mechanism for checking that persons winning tenders have the necessary technical expertise or financial backing to successfully develop leases; and

- could result in environmental degradation through inappropriate marine farming practices by inexperienced operators.

In general, the competition restriction that arises from the administrative discretion in resource rights allocation is not necessary to maximise the economic benefits of resource development; such discretion may even hamper development. Further, the administrative discretion is not necessary to minimise environmental degradation. Other controls, such as the licensing of marine farmers, are available and arguably more enduring.

The Council also raises the following concerns for further consideration by Tasmania.

- The transfer of leases is subject to Ministerial approval and the Minister appears to have restrained discretion to refuse a transfer. The review did not examine this restriction on competition.

- Marine farming development plans appear to have a regulatory effect, but were not subject to review. It is not clear whether these were subject to a gatekeeper process.

The ACT

There is no commercial fishing from public waters in the ACT. The ACT's principal fishery regulation is the *Fisheries Act 2000*, which provides for limiting the gear and catch of recreational fishers of specified species, so as to conserve fish and their habitat. The legislation was scrutinised for competition issues via the ACT's legislation gatekeeping process. The Council assesses that the ACT has complied with its CPA clause 5 obligations in this area.

The Northern Territory

The value of production by the Northern Territory's commercial fishing and aquaculture industries was estimated at A$78.9 million for 1997-98 (ACIL 2000). Aquaculture, mainly for pearls, exceeds the value of the wildcatch. The main fisheries are mudcrab and various finfish.

Fishing and aquaculture in the Northern Territory are regulated by the *Fisheries Act*. The Act restricts entry through licensing, permits and season closures; restricts vessels and gear used; and restricts catch through total allowable catches, minimum sizes and bag limits.

Review and reform activity

The Northern Territory Government commissioned ACIL Consulting to conduct an independent review of the Act. Completed in October 2000, the review made 28 recommendations, including:

- adding a clear statement of objectives to the Act;
- exploring the potential for replacing input controls with individual transferable quotas in all Northern Territory fisheries, beginning with Spanish mackerel and crab fisheries;
- removing various restrictions around licensing, including number, eligibility, allocation, foreign ownership, transferability and renewal;
- beginning a process of increasing the recovery of fishery management costs from fishers; and
- considering the adequacy of resources devoted to enforcing fishery controls.

In April 2003, the Government agreed to implement some recommendations, to progress others via further reviews, and to further consider the public interest arguments for some (mainly around licensing).

Assessment

The Council assesses that the Northern Territory has not met its CPA clause 5 obligation in relation to the Fisheries Act. Some restrictions on competition imposed by the legislation were recommended for removal, but the legislation is still to be reformed.

The Council also highlights one matter for further consideration by the Northern Territory. The review found that the restriction of competition in the Northern Territory pearling industry via hatchery quotas maximises community benefit due to the considerable market power of Australian pearl producers in international markets. As reported above, the review of the Western Australian regulation (which is similar to the Northern Territory regulation) found no demonstrable net public benefit from retaining the hatchery policy. The Northern Territory reviewer, ACIL, prepared a submission to the Western Australian review on behalf of the Pearl Producers Association which argued for the retention of hatchery quota. The Council thus urges the Northern Territory Government to reconsider the review finding of a net public benefit from restrictions on competition in the pearl hatchery industry.

Table 1.11 summarises NCP review and reform activity in each jurisdiction, as well as the Council's assessment of the current status of each jurisdiction in relation to CPA clause 5 obligations relating to fisheries legislation.

Table 1.11: Review and reform activity of legislation regulating fisheries

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Fisheries Management Act 1991*	Licensing of commercial fishers; permits for fish receivers; input controls on boats, gear and fishing methods; output controls such as total allowable catches, individual transferable quota (of which the transfer is subject to various restrictions), size limits, prohibitions on the taking of certain species and restrictions on bycatch	Review by officials and industry representatives was completed in September 2002, finding all restrictions to be in the public interest (although competitive total allowable catches and nontransferable licences should be used only temporarily while longer-term measures are developed).	No reform was recommended.	Meets CPA obligations (June 2003)
	Torres Strait Fisheries Act 1984	Licensing of community and commercial fishers; wide Ministerial powers to prohibit taking of certain species and fish under certain sizes, and to impose a variety of input controls	Review by Commonwealth and Queensland officials was completed in 1999. It recommended: • setting a new statement of objectives for the Act; • maintaining the distinction between community and commercial fishing; • retaining the licensing of fishing; and • retaining wide Ministerial powers to regulate fishing.	No reform recommended.	Meets CPA obligations (June 2003)

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Fisheries Management Act 1994*	Licensing of fishers; access (via share ownership) to share-managed fisheries; input controls on boats, gear, crew levels and fishing methods; output controls such as total allowable catches, bag limits, size limits and prohibitions on taking of certain species	Review completed in 2002. It found most restrictions to be in the public interest, but was unable to reach firm conclusions about fish receiver fees and the cap on charter boat licences. These matters are under further review.	Parliament passed legislation to amend objects of Act.	Review and reform incomplete
Victoria	*Fisheries Act 1995*	Licensing of commercial and recreational fishers; input controls on boat size, gear and fishing methods; output controls such as total allowable catches, individual transferable quota and bag and size limits	Review by independent economic advisers was completed in 1999. It recommended: • retaining access licences but for longer periods and with automatic renewal; • introducing full cost recovery; • considering royalty or rent taxes to limit fishing; • removing restrictions on quota transfers and holdings for abalone; and • replacing input controls with output controls for rock lobster. The Government has accepted most recommendations except that related to licence terms.	Full cost recovery is to be introduced progressively from April 2004. Royalties are to be considered later. Abalone quota transfer and holding restrictions are to be removed mid 2003. Quota was introduced to the rock lobster fishery in 2001.	Review and reform incomplete

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Fisheries Act 1994*	Licensing of fishers and crew; input controls on boat and gear; output controls such as total allowable catches, individual transferable quotas and bag and size limits	Review by officials committee, assisted by independent consultant, was completed in June 2001. It recommended: • simplifying fishery access licensing; • increasing recovery of fishery management costs; • embedding NCP in the ongoing management cycle; • reducing effort in the East Coast Trawl fishery more efficiently than through '2-for-1 boat' replacement; • removing quota holding restrictions in the spanner crab fishery; and • reviewing controls in other fisheries to more efficiently and effectively control effort.	Reviews of licensing and cost recovery are under way. Procedures are in place to review the proposed controls against NCP principles. Tradable effort units introduced to the East Coast Trawl fishery in early 2001. Act was amended in late 2002 to clarify objectives and allow temporary transfers of licences and permits. Management plan reviews are under way. Some restrictions in Spanner crab fishery retained with insufficient evidence	Review and reform incomplete

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Fish Resources Management Act 1994*	Licensing of fishers; prohibitions on market outlets; input controls on boat, gear and fishing methods; output controls such as total allowable catches, quota and bag and size limits	Reviews were completed by 1999. The key recommendations were: • all fisheries — embed NCP principles in the ongoing cycle of fisheries management review; • rock lobster fishery — independently update the earlier study of benefits of moving to individual transferable quota (ITQ) management, and in the interim remove minimum and maximum limits on pot holdings; and • rock lobster processing — remove limits on the number of processing licences, and allow licensees to establish at multiple locations.	Procedures in place for NCP review of proposed new fishery controls. Maximum holding limit of 150 pots removed from rock lobster fishery from July 2003, but minimum limit of 63 pots retained. Officials and industry representatives considering ITQ for rock lobster by December 2006. Licences for rock lobster processing for domestic market unlimited, but not for export market.	Does not meet CPA obligations (June 2003)
	Pearling Act 1990	Licensing of pearling and hatcheries; minimum quota holding for pearling licences; requirement that hatchery licensees must also hold pearling licence; wildstock quota; hatchery quota; prohibition on hatchery sales to other than Australian industry	Review was completed in 1999. It recommended: • removing minimum quota holdings; • decoupling pearl farming licences from pearl fishing licences; • auctioning wildstock quotas; • removing hatchery quotas; • codifying in Regulation the criteria for fishery management decisions; and • establishing an independent review tribunal.	No reform yet, but most recommendations were accepted and drafting of new legislation is under way. The Government intends to retain hatchery quotas.	Review and reform incomplete

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Fisheries Act 1982*	Licensing of fishers and fish farmers; registration of boats and fish processors; input controls on gear and fishing methods; output controls such as catch limits, size limits and prohibitions on the taking of certain species	Review by officials was completed in October 2002. It recommended removing the 'one person, one licence' restriction and further reviewing various other restrictions. A general review of the Act is under way.	No reform yet, but the Government intends to introduce amendments to the 2003 spring session of Parliament.	Review and reform incomplete
	Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987	Imposition on remaining licence holders of the cost of compensating those who surrendered their licences	Review by officials was completed in 1999. Act achieved the objective of reducing licence numbers.	Act is to be repealed once settlement with remaining licence holders is finalised.	Review and reform incomplete
	Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987	Prohibition on licensees from transferring their licences; imposition on remaining licence holders of the cost of compensating those who surrendered their licences	Review by officials was completed. Act achieved the objective of reducing licence numbers.	Act was repealed.	Meets CPA obligations (June 2002)

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Inland Fisheries Act 1995*	Licensing of commercial fishers and fish farms; registration of private fisheries, fish processors and sellers	Review was completed in December 2000, recommending various changes to simplify licensing arrangements.	Act and licences have been amended as recommended.	Meets CPA obligations (June 2003)
	Living Marine Resources Management Act 1995	Licensing of fishers, handlers, processors and marine farmers; input controls on gear, vessel operations and handling and storage standards; output controls such as quotas, size limits and species	Review was completed in January 2000. It recommended retaining all restrictions.	No reform was recommended.	Meets CPA obligations (June 2003)
	Marine Farming Planning Act 1995	Prohibition on marine farming outside marine farming zones; administrative discretion in allocation of water leases to marine farmers; lease transfers subject to Ministerial approval	Review was completed in April 2000. It recommended retaining all restrictions. but did not review some.	No reform was recommended. The Council has concerns about the evidence for retaining administrative discretion in allocating farming zones.	Does not meet CPA obligations (June 2003)

(*continued*)

Table 1.11 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Fisheries Act 2000*	No restrictions (no commercial fishing in the ACT)	Act was considered via legislation gatekeeping process.	New legislation.	Meets CPA obligations (June 2002)
Northern Territory	*Fisheries Act*	Licensing of fishers; input controls on vessels, gear, fishing methods and landings; output controls such as total allowable catches, size and bag limits, and prohibitions on taking of certain species.	Review by independent advisers was completed in October 2000. Key recommendations were to: • explore potential for replacing input controls with ITQ; • remove various restrictions around licensing; • begin the process towards recovering fishery management costs from fishers; and • consider the adequacy of enforcement resources.	No reform as yet but the Government has accepted some recommendations and is considering others.	Review and reform incomplete

Forestry

Native forest covers 164 million hectares or 21 per cent of Australia's land area (ABS 2002a). Of this, 76 per cent is on public land and 23 per cent on private land. Of publicly–owned forests, 16 per cent is held in conservation reserves, 14 per cent on other Crown land, 10 per cent managed for multiple uses including timber production, and 60 per cent on pastoral leases. Almost 70 per cent of Australia's native forest is therefore under some form of private management.

Plantations account for 1.5 million hectares. Two thirds of these are softwood (mainly pinus radiata) and the balance hardwood (eucalyptus). Ownership arrangements are diverse encompassing sole public or private ownership and joint ventures.

Table 1.12: Forest estate by State/Territory and type

Type ('000 ha)	*NSW*	*Vic*	*Qld*	*WA*	*SA*	*Tas*	*NT*	*ACT*
Public native forest	17 641	6532	39 990	33 207	9538	2233	18 182	121
- conservation reserve (%)	28	46	9	13	41	35	0	89
- other Crown land (%)	10	3	5	40	4	8	2	-
- pastoral lease (%)	52	1	76	42	55	-	98	9
- multiple use incl wood (%)	10	51	11	5	0	58	-	2
Private native forest	6938	1183	9182	1502	852	901	16 694	-
Other native forest	2117	1	54	90	399	-	3	-
Plantation	319	319	191	314	136	185	7	15

Note: Other Crown land includes land reserved for educational, scientific, defence or other institutional uses. Multiple use Crown land is land managed for wood and other values. Other native forest land is land where tenure is unresolved.

Source: National Forest Inventory 2001 via ABS.

Australia's native and plantation forests provide a range of benefits to the community.

Forests are a reservoir of biological diversity and functioning ecosystems. They provide protection for soils and water resources, and are increasingly being recognised for their potential as carbon sinks. They provide for a vast array of recreational and educational activities.

Forests are the basis for important wood–based industries which produce sawn timber, fibreboard, plywood and paper. In 1999-2000 the wood and paper product industries generated $13.7 billion of turnover, including exports of $1.6 billion, and employed 74 500 workers as at 30 June 2000 (AFFA 2002). Other forest–related industries produce honey, wildflowers, natural oils, gums, resins, medicines, firewood, craft wood, grazing and minerals.

Plantations have provided progressively more of the wood resource required by Australia's wood and paper industries in recent years. In August 2002, ABARE released projections which forecast that this trend would continue, and at a rate faster than previously expected. For example, it is possible that forest plantations could be providing 75 per cent of domestic industrial wood supplies by 2010, compared with earlier expectations of around 62 per cent (ABARE 2002).

Governments intervene in forestry via both regulation and ownership. Hence the CPA clauses most relevant to forestry are clause 5 (legislation review) and clause 3 (competitive neutrality).

Legislation review

Legislative restrictions on competition

All governments other than New South Wales and the Northern Territory scheduled legislation related to forestry for review under NCP. This legislation features a variety of potential restrictions on competition, for example:

- setting minimum standards for how certain forest operations are to be conducted;
- licensing the export of wood chips and unprocessed wood;
- licensing the processing of timber; and
- capping the volume of particular timbers that may be harvested in a given period.

There are two classes of legislation that the Council has determined are not a priority for assessment.

All State governments have legislation providing for the management of publicly–owned forests available for the production of timber and other commodities. This legislation generally provides for:

- designating public land as State forest;
- vesting management and control of State forests in a government agency;
- prohibiting certain unauthorised activities in State forests and issuing various rights to access to State forests and/or to extract resources from them.

This legislation does not affect forestry activity on private land and generally does not of itself restrict competition in the supply of timber and other forest

commodities except insofar as it leaves State forest agencies with considerable discretion in how they price and allocate these commodities. This discretion has in the past arguably allowed valuable supply rights to be allocated in an anticompetitive manner — for example, to incumbent timber processors promising certain employment benefits or additional processing investment in return for concessionary log royalties.

Such practices are less likely to reoccur now because all State forest agencies:

- have been reformed (to varying degrees) into government business enterprises in accordance with CPA clause 3 obligations and, hence, are required to earn a return from managing State forests and selling forest commodities; and

- are, since the Conduct Code Agreement, subject to the prohibitions on anticompetitive trade practices under part IV of the Trade Practices Act, including anticompetitive agreements, misuse of market power and exclusive dealing.

The Council has therefore chosen to focus its assessment of competitive reform of public forestry on the fulfilment of CPA clause 3 obligations relating to government forest businesses. This is the subject of the following section.

Lastly, several States have in place forest agreement Acts, such as Victoria's *Forestry (Woodpulp Agreement) Act 1996*. Legislation of this type ratifies agreements to provide long term rights to timber supply — 35 years in the case of this particular Act — usually on a take–or–pay basis. The potential restriction on competition is not the term of these rights — long term property rights are often consistent with promoting competition — but how such rights are allocated between potential holders. However, allocation decisions of this kind are typically not governed by legislation, and therefore not directly subject to review under CPA clause 5, although there are other important grounds why such allocation decisions should be made in an open and competitive manner. The legislation itself generally merely ratifies allocation decisions already made and no change is possible without disturbing the underlying rights.

Table 1.13 summarises government's progress in reviewing and reforming forestry legislation.

Regulating in the public interest

As noted earlier, forests provide a wide range of benefits to the community, from the conservation of biological diversity, soil productivity and water quality to recreational experiences, timber production and stock grazing.

Governments intervene in forest use principally because some of these benefits are difficult for forest owners to trade as it is too costly to exclude those who have not paid for a particular benefit from enjoying it. In addition,

those forest benefits that are readily tradable are, above a certain of intensity use, competitive with nontradable (for example, ecological) benefits. Consequently, without government intervention, community welfare will tend to be reduced because forest owners have an incentive to produce too little of, for instance, biological diversity and aesthetic amenity, and too much of timber and grazing.

Historically, where nontradable forest values are particularly prominent, such that almost no intensity of say timber production is possible without seriously compromising the adequate availability of such values, governments have retained forests in public ownership and often reserved them as national parks or similar. More recently, governments have encouraged owners of significant private forests to place protective covenants on their land.

Nevertheless, important nontradable forest values occur outside such areas. Here governments intervene via regulation to protect the adequate availability of nontradable forest values while maximising economic benefits to the community from the exploitation of tradable forest values. Governments also regulate to control costs imposed on others by certain activities associated with timber production. For example, heavy traffic associated with the harvesting of a forest may damage minor roads. Generally, a sound forest regulatory regime will:

- impose minimum restrictions to effectively protect particular nontradable forest values and mitigate or remedy any clearly identified harms;
- provide for compliance monitoring by independent accredited persons and the auditing of such monitoring; and
- be stable and predictable so that forest owners and downstream businesses can have confidence their long term investments have a reasonable prospect of generating the return they initially expected.

Export controls

The Commonwealth controls the export of wood and woodchips via regulations under the *Export Control Act 1982*. These regulations are the Export Control (Unprocessed Wood) Regulations, the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Regional Forests Agreements) Regulations.

The regulations prohibit the export of:

- hardwood wood chips from public and private native forests unless:
  - from a region covered by a Regional Forest Agreement; or
  - the exporter holds a restricted shipment licence granted by the Minister on a shipment–by–shipment basis for wood chips from other regions;

- other unprocessed wood from public or private native forests unless from a region covered by a Regional Forest Agreement; or

- other unprocessed wood from plantations, whether hardwood or softwood, on private or public land, unless:

  – from a State or Territory with a code of forest practice for plantation management that the Minister accepts satisfactorily protects environmental and heritage values; or

  – the exporter is the holder of a licence to export that wood granted by the Minister.

Regional Forest Agreements (RFA) are agreements between the Commonwealth and respective State Governments to protect environmental and other values by maintaining a comprehensive, adequate and representative national forest reserve system and to give forest industries a firm base for investment. There are 10 RFAs in four States: Western Australia, Victoria, Tasmania and New South Wales.

Codes of forest practice for plantation management are now in place for all jurisdictions other than Queensland and the Northern Territory.

Review and reform activity

The Commonwealth completed the review of various regulations under the Export Control Act affecting wood in July 2001. The review, principally by Department of Agriculture, Fisheries and Forestry (Australia) officials, was unable to find any significant benefit from the regulations – either in encouraging domestic processing or sustainable management of forests. It recommended that the Government:

- remove export controls on sandalwood;

- remove export controls over plantation–sourced wood if reviews of plantation codes of practice for Queensland and the Northern Territory find these meet National Plantation Principles[5]; and

- either remove export controls over native forest–sourced hardwood chips, or allow such exports from non–RFA regions under licence.

The Government is removing the controls on exporting sandalwood in 2003. Reviews of the Queensland and Northern Territory codes of forest practices identified some shortcomings. The Government is consulting with the respective governments about improvements to these codes before it removes the export controls on plantation–sourced wood. It will consider the last recommendation thereafter.

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5 Standing Committee on Forests, *National Principles for Forest Practices Related to Wood Production in Plantations*, March 1996.

Assessment

The Commonwealth has not met its CPA clause 5 obligations arising from export controls on wood as reform of the controls is not yet complete. In particular the Commonwealth is still to remove controls on the export of sandalwood and native forest–sourced hardwood chips.

Forest practice standards

Tasmania regulates the establishment, maintenance and harvesting of forests, native and plantations, on public and private land, via the *Forest Practices Act 1985*. The Act aims to protect natural and cultural values on land subject to forest operations.

The Act restricts competition in forest-related markets principally by:

- setting various minimum standards for timber harvesting and other forest practices (the Forest Practices Code);
- prohibiting timber harvesting unless a timber harvesting plan has been approved by a forest practices officer as consistent with the Code;
- appointing as forest practices officers only persons with certain qualifications, experience and training; and
- requiring timber processors to submit certain planning documents to the Forest Practices Board allowing the Board to consult with processors and local government on roading impacts.

Review and reform activity

Tasmania completed a review of the Act in 1998. The review, by a group of officials and industry representatives making up the Forest Practices Advisory Council (a consultative forum), found all restrictions on competition to be in the public interest.

The Forest Practices Code is subject to public review and revision every five years.

Assessment

Tasmania has met its CPA clause 5 obligations relating to the Forest Practices Act.

Timber harvesting limits

Western Australia and South Australia have regulated the harvest of sandalwood from private and public land via the *Sandalwood Act 1929* (Western Australia) and the *Sandalwood Act 1930* (South Australia). Sandalwood is a very slow–growing tree native to both States and valued for its aromatic qualities. Most sandalwood is exported to Asian markets as logs which are powdered and used to make incense sticks and ornamental works.

The legislation in each State is similar. It controls the harvesting of sandalwood on private and public land (other than from plantations in Western Australia). The key restrictions on competition are that:

- the State Government may restrict the total volume of sandalwood harvested from public and private land in any given period;
- no more than 10% of total approved sandalwood harvest in any year may be sourced from private land; and
- no person may harvest sandalwood unless licensed to do so.

Licences to harvest on public land carry controls on areas of land accessible and tree sizes. Licences to harvest on private land are allocated by order of application and an assessment of volume available.

Review and reform activity

The review of Western Australia's Sandalwood Act by the Department of Conservation and Land Management, completed in November 1997, recommended:

- removing the 10% cap on the amount of sandalwood which can be harvested from private land; but
- retaining total harvest quotas and licensing of sandalwood harvesters.

Legislation currently before the Parliament, the Acts Amendment and Repeal (Competition Policy) Bill will, once passed, remove the former restriction.

The review of South Australia's Sandalwood Act in 1999 recommended its repeal. The Act was duly repealed in April 2001.

Assessment

Western Australia has not met its CPA clause 5 obligations arising from its Sandalwood Act. Firstly, it is yet to remove the 10% cap on harvest from private land. Secondly, it has not adequately demonstrated that restricting sandalwood harvesting from private land via the total quota and licensing is in the public interest.

The review argued that private landowners frequently over–estimate their sustainable harvest and that restricting the harvest of privately–owned sandalwood prevents over–exploitation. However, according to the review privately–owned sandalwood is estimated to make up around only 1.5% of the total resource, and the net present value of this small part of the resource may be maximised by allowing increased production to the point of exhaustion. Except where important environmental values are threatened, and markets for such values have not developed, decisions by private owners about how to manage their resources are unlikely to conflict with the public interest.

South Australia has met its CPA clause 5 obligations arising from its Sandalwood Act.

Sawmill licensing

Under the *Sawmills Licensing Act 1936,* Queensland prohibits the operation of a sawmill without a licence. The Act provides the chief executive of the Department of Primary Industries with absolute discretion over the issue of licences and the conditions to be attached to them. Generally, licences require operators to keep records and return information to the Chief Executive.

A review of the Act was completed in December 2000, recommending its repeal. The Government has agreed-in-principle to repeal the Act and may include this in its next Primary Legislation Amendment Bill which is currently proposed for introduction in the first half of 2004..

The Government considers that the legislation, while remaining in force, does not impose a restriction on competition as it is presently administered, because there are no limits on the issue of mill licences (either in relation to number or capacity), nor are there any impediments to the transfer of licences or the entry of new operators. In addition, the annual licence fee is set at a minimal amount.

The Council accepts that the legislation is not presently restricting competition but the discretion it allows to the chief executive could be administered anticompetitively. Because the reform has not been completed, the Council assesses that Queensland is yet to meet its CPA clause 5 obligations arising from the Sawmills Licensing Act as reform has not been completed.

Table 1.13: Review and reform of legislation regulating forestry

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	Regulations under the Export Control Act related to wood	Licensing of unprocessed wood exports Licensing of hardwood chip exports	Review principally by AFFA officials completed July 2001. It recommended removing controls over export of sandalwood and over the export of plantation–sourced wood and hardwood chips subject to certain conditions.	None yet. Sandalwood controls to be removed in 2003. Removal of other controls still under consideration.	Review and reform incomplete
Queensland	*Sawmills Licencing Act 1936*	Licensing of sawmills at absolute discretion of the Chief Executive (or delegate) of the department	Reviewed in 2000, recommending repeal. Government has agreed in principle.	None yet, but may occur in the first half of 2004.	Review and reform incomplete
Western Australia	*Sandalwood Act 1929*	Caps the quantity of naturally–occurring sandalwood harvested from Crown and private land Harvest from private land capped at 10 per cent of the total Licensing the harvesting of sandalwood	Review completed. It recommended removing the restriction on the proportion of the annual sandalwood harvest that may be taken from private land but retaining the overall cap on the quantity sandalwood harvested, and retaining licensing.	None yet but bill before Parliament to amend Act accordingly.	Review and reform incomplete
South Australia	*Sandalwood Act 1930*	Same as above	Reviewed in 1999. The review recommended repeal of the Act.	Act repealed in April 2001.	Meets CPA obligations (June 2003)
Tasmania	*Forest Practices Act 1985*	Prescribes forest practices under Forest Practices Code Prohibits timber harvesting without a certified forest practices plan Major processors must submit certain planning documents	Reviewed in 1998 by Forest Practices Advisory Council. The review recommended no changes to the Act.	None required.	Meets CPA obligations (June 2003)

Competitive neutrality

All State Governments and the ACT Government own substantial forestry-related businesses, managing and growing forests for the production of wood products in competition (current or potential) with private forest owners.

There have been longstanding concerns that timber supplied by forest agencies is sometimes underpriced. Underpricing timber imposes various costs on the community, including:

- supporting exploitation of native forests at higher than economic levels;
- slowing productivity growth in the timber processing industry; and
- hampering the development of private plantations (and hence related benefits such as the contribution that private plantations make to controlling salinity in certain dryland farming areas and to sequestering carbon).

As noted in chapter 2 of volume 1, competitive neutrality principles aim to ensure Australia's resources are used efficiently by removing any net competitive advantage that public businesses accrue from their government ownership.

The governments of the States and the ACT, as owners of significant forestry businesses, are obliged by clause 3 of the CPA to, where appropriate, either:

- corporatise these forestry businesses and impose on these businesses tax, debt and regulatory obligations equivalent to those faced by privately–owned competitors; or
- ensure that prices charged by these businesses take into account tax, debt and regulatory imposts and reflect the full costs of their activities;

to the extent that the benefits of implementing these principles outweigh the costs.

Each government is free to determine its own agenda for implementing these principles.

Governments are also obliged to publish an annual report on the implementation of these principles including allegations of noncompliance.

The Council's general approach to assessing each government's compliance with its competitive neutrality obligations, as set out in chapter 2 of volume 1, is to look for coverage of all significant government business activities to the extent that the benefits outweigh the costs, and for effective processes for investigating and acting on allegations of noncompliance by significant government business activities. The Council has also considered the financial performance of government trading enterprises (large business activities).

Most government forestry businesses are substantial suppliers of forest commodities and dominate their regional markets. In these circumstances the public interest is likely to be best served by implementing competitive neutrality principles to their fullest extent.

Implementation

All government forestry businesses have been subject to reform since 1995. Those in New South Wales, Western Australia, South Australia and Tasmania have been corporatised and now operate as distinct entities governed by boards of directors. Those in Victoria, Queensland and the ACT are departmental business units charged with a commercial focus. All but Victoria's forestry business provide public reports on their commercial performance.

Competitive neutrality reform in forestry is continuing. The Victorian Government announced in February 2002 that it will establish Forestry Victoria as a separate commercial entity (DNRE 2002). Western Australia is currently reviewing competitive neutrality implementation for its Forest Products Commission.

Implementation of competitive neutrality policy and principles in public forestry to date is outlined in table 1.14.

All government forestry businesses with the exception of Forestry Victoria are liable for State/Territory taxes and Commonwealth tax equivalents.

The imposition of local taxes such as land rates on government businesses is not specifically mentioned in CPA clause 3. Nevertheless, it is consistent with the objective of competitive neutrality policy (CPA clause 3(1)). Only the Forest Products Commission (WA), ForestrySA and ACT Forests currently pay land rates. Some government forestry businesses contribute to local government roading investment. The New South Wales and Tasmanian Governments are currently reviewing their policy on the liability of government businesses for local taxes.

The government forestry businesses of New South Wales, Queensland, Western Australia and Tasmania had interest–bearing borrowings at 30 June 2002. In each case they pay a margin above the respective government's cost of borrowing to ensure their borrowing costs are equivalent to those paid by similar private businesses.

Government forestry businesses face similar or more onerous regulatory requirements than those faced by private forestry businesses. In the ACT and all States other than Queensland, a code of forest practices generally applies to both public and private plantation and native forestry, requiring operators to carry out timber growing and harvesting operations in a way that is compatible with conservation of the wide range of environmental values associated with forests and promotes the ecologically sustainable

management of native forests proposed for continuous timber production. Monitoring and enforcement of such codes is generally the responsibility of environmental protection agencies. In Queensland, a code of practice administered by the Environmental Protection Agency applies to forestry operations in state-controlled native forest only. A broader code of practice is being developed.

Table 1.14: Implementation of competitive neutrality in public forestry

State	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*
Agency	State Forests of NSW (SFNSW)	Forestry Victoria (FV)	DPI Forestry (DPIF)	Forests Products Commission (FPC)	Forestry SA (FSA)	Forestry Tasmania (FT)	ACT Forests (ACTF)
Business	Native forests and plantations	Native forests	Native forests and plantations	Native forestry and plantations	Plantations	Native forests and plantations	Plantations
Legal status	Authority constituted by the *Forestry Act 1916*	Business unit of the Department of Sustainability & Environment	Business unit of the Department of Primary Industries	Authority constituted by the *Forest Products Act 2000*	Corporation constituted by the *SA Forestry Corporation Act 2000* and subject to the *Public Corporations Act 1993*	Corporation constituted by the *Forestry Act 1920* and subject to the *Government Business Enterprises Act 1995*	Business unit of the Department of Urban Services
Tax:							
– Commonwealth tax equivalent	Liable	Not liable	Liable	Liable	Liable	Liable	Liable
- State/territory taxes	Liable	Not liable	Liable	Liable	Liable	Liable	Liable
- land rates and other local taxes	Not liable but under review in 2003	Not liable	Not liable but contributes to specific related roading investments	Liable for other than forest land	Liable	Not liable but under review in 2003	Liable
Debt	Cost of borrowing based on independent assessment of standalone credit rating	No interest–bearing debt	0.5% margin above Government rate	Market rate – 8% on borrowings from Treasury Corp	No interest–bearing debt	Interest differential established based on assessed business risk.	No interest–bearing debt

Table 1.14: continued

State	*New South Wales*	*Victoria*	*Queensland*	*Western Australia*	*South Australia*	*Tasmania*	*ACT*
Agency	State Forests of NSW (SFNSW)	Forestry Victoria (FV)	DPI Forestry (DPIF)	Forests Products Commission (FPC)	Forestry SA (FSA)	Forestry Tasmania (FT)	ACT Forests (ACTF)
CSO payments	A$9.6 million in 2001–02	–	–	A$0.5 million in 2001–02	A$3.5 million in 2001–02	–	A$1.2 million in 2001–02
Historical return on assets[6]	2% average over 5 years	Not available	3% average over 5 years	Insufficient history	Insufficient history	1% average over 3 years	Not available
Complaints mechanism	Covered. No complaints referred to IPART.	Covered. One complaint addressed by participation in CN review.	Covered. No complaints received to date.	Covered. No complaints received to date.	Covered. No complaints received to date.	Covered. No complaints received to date.	Covered. No complaints received to date.

6 Estimates based on results reported in annual reports of government forestry businesses.

Competitive neutrality requires not only that government businesses face the same tax, debt and regulatory burden of similar private businesses, but that over the medium to long term they are profitable. In other words, they recover the risk adjusted opportunity cost of capital invested in the business through earning a commercial return on fairly valued assets. Poor returns may indicate that they are charging prices lower than private sector competitors, which must fully recover costs to remain viable over the longer term, or that the resources employed in the business could be used more productively elsewhere.

In forestry, however, rates of return may not be sufficient to provide assurance that the aim of competitive neutrality is being achieved.

Following the introduction in June 2000 of Australian Accounting Standard AAS35, which concerns the valuation of self generating and regenerating assets held for profit, private and public forestry businesses now value forests at their net market value at each reporting date. The net market value of self generating and regenerating assets is the observable price in an active and liquid market or, where no such price is available, the best indicator of net market price in an active and liquid market. Often active and liquid markets for 'whole' forests do not exist. Forestry businesses often adopt either of the following methods to estimate net market value:

- the observed market price for standing timber volumes less disposal costs — known as net realisable value; or

- the net present value of expected future cash inflows and outflows associated with the asset.

Using these methods the net market value is a reflection of timber prices and, in the case of net present value, management costs. There is thus a degree of circularity between timber prices, financial results and forest valuations. Consequently rates of return must be considered alongside information on forest valuation assumptions and changes to make meaningful assessments of the financial performance of forestry businesses.

In some regions, forestry businesses supply a single timber processor which has some monopsony power in markets for unprocessed timber due to high timber transport costs and economies of scale in timber processing. Such processors may be able to drive timber prices below competitive levels unless forestry businesses respond effectively through means such as:

- offering by auction or tender timber supply contracts with security sufficient to attract competitive bids from potential entrants willing to invest in new processing capacity; or

- using independent benchmarks, such as processed timber prices and processing cost information from competitive processing markets, in contract negotiations with incumbent processors.

The problem for governments in monitoring the financial performance of their forestry businesses is that, because of circularity between prices and forest values, underpricing of timber due to 'weak selling' or discrimination may not be revealed in reported rates of return.

Possible solutions to this problem may be that governments require their forestry businesses to:

- use independent timber price benchmarks for forest valuation purposes, rather than the prices they realise, where these differ; and/or
- make available for public scrutiny, via disclosure in annual reports, the timber prices assumed for forest valuation purposes.

AAS 35 requires forestry businesses to disclose significant assumptions made in determining net market values where these are based on amounts other than market prices observed in active and liquid markets. The audited financial reports of Government forestry businesses generally note that forest valuations are based on current realised prices. They do not, however, disclose the actual amounts.

In 2003 for the first time the Productivity Commission included government forestry businesses in its report on the financial performance of government businesses (PC 2003a). It found that all forestry businesses (other than Victoria's which does not report separately from the wider department) reported a positive return on assets[7] in 2001–02 (see table 1.15).

Table 1.15: 2001-02 profitability of government forestry businesses[8]

Forestry business	*State Forests of NSW*	*DPI Forestry (Qld)*	*Forests Products Commission (WA)*	*ForestrySA*	*Forestry Tasmania*	*ACT Forests*
Operating profit before tax $m	58	110	24	39	9	4
Return on assets %	2.4	10.6	8.7	4.6	1.6	4.0

Source: PC 2003a.

The Commission noted, however, that annual rates of return need to be assessed in the context of longer term trends and other relevant information, owing to their sensitivity to market cycles and asset valuation assumptions (as discussed earlier).

7 The Commission defines return on assets as earnings before interest and tax and after abnormals (including asset valuation changes) over average total assets.

8 The correction of errors in earlier forest valuations increased the 2001-02 profit of the Forest Products Commission (WA) by A$10.2 million and decreased the profit of Forestry Tasmania by A$12.25 million.

Longer term performance data is available only for State Forests of NSW, DPI Forestry (Queensland) and Forestry Tasmania which have been established in their current form for some years now (see table 1.14). Averaged over five years the highest return on assets was earned by DPI Forestry, at 3 per cent a year. State Forests of NSW and Forestry Tasmania have made average returns of 2 per cent a year over five years and 1 per cent a year over three years respectively.

The Commission noted that in 2001–02 the risk–free rate of return, taken to be the 10 year Commonwealth Government bond rate, was 5.9 per cent (PC 2003, p. 9). Given the market risk inherent in any business it is reasonable to expect government forestry businesses to earn a return significantly above this rate.

The implementation of competitive neutrality by a government forestry business has drawn one formal complaint — in Victoria, relating to pricing of hardwood sawlogs. The complaint was addressed by allowing the complainant to participate in a major review undertaken of CN implementation in forestry. As noted above the Victorian Government announced in 2002 that it will corporatise Forestry Victoria.

Assessment

The Council assesses that, with the exception of Victoria, all States and the ACT are well advanced in implementing the obligations of CPA clause 3 to the extent that benefits exceed costs, having corporatised or 'commercialised' their government forestry businesses. Victoria is less well advanced but the State Government is committed to the reform of Forestry Victoria and is engaged in the design of new institutional arrangements for the business.

At this point, however, the Council is unable to confidently assess any government as fully meeting their obligations under CPA clause 3 arising from their forestry businesses, as these businesses are yet to establish track records of earning adequate profits. The Council also notes that State Forests of NSW, Forestry Victoria, DPI Forestry and Forestry Tasmania are not currently liable for land rates and related local taxes and charges, but that New South Wales and Tasmania are reviewing this matter.

Lastly, the Council notes that, even if government forestry businesses establish satisfactory track records of profitability, circularity between timber prices realised by government forestry businesses and their forest valuations may allow underpricing to persist. The existing level of disclosure by government forestry businesses of their forest valuation assumptions may meet the minimum standard required by AAS 35 and, hence, auditors of financial reports. However, a higher standard of disclosure of timber prices assumed for valuation purposes may be required to be confident that the aims of competitive neutrality are being achieved.

Agriculture-related products and services

This section considers governments' progress in fulfilling NCP obligations relating to legislation review and reform (CPA clause 5) and structural reform (CPA clause 4) in the agriculture-related activities of:

- agricultural and veterinary (agvet) chemicals;
- farm debt finance;
- bulk grain handling and storage;
- food;
- quarantine and food exports; and
- veterinary services.

Agricultural and veterinary chemicals

Agricultural chemicals are chemicals used to protect crops against pests, inhibit weeds and modify plant development. Veterinary chemicals are applied to animals to prevent or treat disease or injury, or modify physiological development.

Legislative restrictions on competition

Agvet chemicals are regulated under Commonwealth, State and Territory legislation. These laws establish the national registration scheme for these chemicals, which covers the evaluation, registration, handling and control of agvet chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The Commonwealth Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each State and Territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

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

Table 1.16 summarises governments' progress in reviewing and reforming legislation regulating agvet chemicals.

Regulating in the public interest

Agvet chemicals pose serious risks if not supplied or used with due care, including risks to public health, worker health, the environment, animal welfare and international trade. Chemical suppliers generally have strong incentives to produce chemicals safely, ensure they are fit-for-purpose, and make consumers aware of how to use the products safely. Users too generally have strong incentives to choose chemicals that are fit-for-purpose and use them safely. Less than optimal care may result, however, where third parties bear some costs of chemical supply or use, and encounter practical difficulties in achieving compensation from the chemical supplier or user at fault. Governments therefore endeavour through regulation to deliver a level of chemical safety that is acceptable to the community.

Chemical safety regulation imposes costs on businesses by requiring, for example, specified premises design and equipment, staff training, and up-to-date knowledge of changes in regulation. These and other costs are passed on to consumers through higher prices and reduced choices. For this reason, chemical regulation should:

- intervene only on the basis of sound science and risk assessment;
- hold chemical suppliers and users responsible for safety, by setting simple and clear performance standards and allowing suppliers/users the freedom to choose how to meet these standards; and
- unless necessary to protect health:
  - not impose significant barriers to entry by suppliers into chemical markets;
  - not impose different regulatory burdens on suppliers of competing chemical products; and
  - allow competition in the delivery of chemical safety services such as assessment and analysis.

Review and reform activity

National chemical registration scheme

In 1999, on behalf of all governments, Victoria coordinated a review of the national registration scheme for agvet chemicals. The independent reviewers recommended:

- retaining the National Registration Authority (now the Australian Pesticides and Veterinary Medicines Authority) as the sole registration body;

- introducing a low cost registration process for low risk chemicals;
- making contestable the assessment services purchased by the National Registration Authority;
- limiting the National Registration Authority's efficacy assessments to a determination that labelling is 'true' (removing the 'and appropriate' criterion);
- allowing the National Registration Authority to continue operating on a cost-recovery basis, but simplifying the means of determining levies and fees;
- retaining the licensing of veterinary chemical manufacturers but removing the reserve powers for the licensing of agricultural chemical manufacturers until the case for such licensing is made; and
- modifying the compensation arrangements for third party access to chemical assessment data, consistent with the principles contained in part IIIA of the TPA.

In January 2000, agriculture and resource management Ministers agreed to an intergovernmental response to the review. The response accepted all recommendations except:

- removing the provision to license agricultural chemical manufacturers. This provision was retained, and manufacturers exempted, pending further review by the Commonwealth; and
- removing the 'appropriate' criterion from the efficacy review. This recommendation is believed to be inconsistent with minimising chemical use and the associated risks.

The Commonwealth Government has considered the recommendation concerning compensation for third party access to chemical assessment data, and agreed an enhanced data protection mechanism is needed. The Government has consulted key industry stakeholders on the proposed reform package. Legislation to give effect to these reforms is being drafted.

A task force examined review recommendations on the regulation of low risk chemicals, and the Commonwealth Government subsequently introduced the Agricultural and Veterinary Chemicals Legislation Amendment Bill 2002, which Parliament passed in March 2003.

Working groups were established to progress the following issues:

- how to set fees and levies to ensure the Australian Pesticides and Veterinary Medicines Authority continues to operate on a cost-recovery basis. The Primary Industries Standing Committee endorsed the outcome of this investigation in late 2002.

- how to monitor the quality of assessment services that the Australian Pesticides and Veterinary Medicines Authority purchases from alternative providers. The Primary Industries Standing Committee also endorsed the outcome of this investigation in late 2002; and

- whether licensing of agricultural chemical manufacturers is in the public interest. The final report of this working group was sent to the Primary Industries Standing Committee in June 2003.

'Control of use' legislation

Review activity is complete, but several jurisdictions have delayed finalising the necessary legislative changes. The national review coordinated by Victoria also examined 'control of use' legislation in Victoria, Queensland, Western Australia and Tasmania. (Similar legislation in New South Wales, South Australia and the Northern Territory was reviewed separately.) The national review recommended that these governments:

- establish a task force to develop a nationally consistent approach to off-label use;

- continue to exempt veterinarians from provisions relating to the supply and use of veterinary chemicals, but remove the exemption in relation to agricultural chemicals; and

- retain the minimum necessary licensing (business and occupational) for agricultural chemical spraying.

Ministers in these jurisdictions established a Control of Use Taskforce as recommended. The development of a policy for off-label use proved difficult, and the taskforce considered that more work is needed to specify the circumstances in which a chemical can be used on another crop, and that this work should be undertaken along with an investigation of different methods of application and different noncrop situations. This work will be progressed through the Primary Industries Standing Committee in consultation with the Australian Pesticides and Veterinary Medicines Authority's Labelling Working Group, which is working to improve chemical labelling.

The Control of Use Taskforce agreed to remove the veterinarian exemption from provisions on agricultural chemicals and to reform the licensing of agricultural chemical sprayers. Victoria amended its legislation accordingly, but retained a licence condition that aerial sprayers must hold an approved insurance policy. The review recommendations that relate to aerial spraying are being addressed by the Agricultural and Veterinary Chemicals Policy Committee Aerial Spraying Licensing Group which is considering whether the licence condition is in the public interest.

Queensland intends to amend the State's 'control of use' legislation (to cater for low regulatory risk chemicals) in conjunction with the amendments to the Commonwealth's Agriculture and Veterinary Code Act. The Government

proposes to allow for reduced controls over the use of the lowest risk products, providing the use accords with conditions set by the Australian Pesticides and Veterinary Medicines Authority for Agricultural and Veterinary Chemicals. Also, Queensland amended the *Agricultural Chemicals Distribution Control Act 1966*) and *Chemical Usage (Agricultural and Veterinary) Control Act 1988* to implement all relevant NCP reforms within the State's area of responsibility. The amendments extend the current business licensing arrangements from aerial to ground businesses, introduce controls over the use of agricultural and veterinary chemicals by veterinary surgeons, and make other minor changes in line with the NCP review requirements. The amendments ensure Queensland's legislation is consistent with similar legislation in other States and Territories.

Queensland advised it is progressing changes to Regulations required to give full effect to the Agricultural Chemicals Distribution Control Act amendments. The issues examined in the NCP review of the principle Act should mean that a further review of the Regulations is not required.

Western Australia will implement review recommendations through amendments to its legislation. The Agricultural Amendment Bill is being drafted, and the Veterinary Preparation and the Animal Feeding Stuffs Amendment Bill 2003 was introduced to Parliament in 2003.

Tasmania incorporated the recommendations from the national review of 'control of use' legislation into the Agricultural and Veterinary Chemicals (Control of Use) Amendment Bill 2002. This Bill passed the Legislative Assembly in November 2002, but is yet to be considered by the Legislative Council. The Bill removes the requirement for a permit for low risk off-label use of agricultural chemicals, and limits the exemption of pharmaceutical chemists when they are acting under the instructions of a veterinary surgeon.

The only significant outstanding matter for New South Wales concerns the advertising restrictions in the *Stock Medicines Act 1989*. The Government reported that it is considering a proposal to amalgamate chemical residues legislation, including the Stock Medicines Act. The proposed legislation, which would contain no advertising restrictions, was planned for introduction later in 2003, but has been delayed due to the delay in establishing the national agvet chemicals code.

South Australia's Parliament passed *Agricultural and Veterinary Products (Control of Use) Act 2002* in August 2002. The Act repealed the *Agricultural Chemicals Act 1955,* the *Stock Foods Act 1941* and the *Stock Medicines Act 1939*. The restrictions in the Act were reviewed and found to be in the public interest. Further, all proposed major Regulations have been the subject of public discussion and their drafting is nearing completion. The Act and Regulations are expected to come into operation later in 2003.

The ACT replaced its *Pesticides Act 1989* with the *Environment Protection Act 1997*. The replacement Act:

- prohibits off-label use of registered chemicals and any use of unregistered chemicals, unless under a permit issued by the Australian Pesticides and Veterinary Medicines Authority; and

- prohibits the commercial use of registered chemicals unless authorised by Environment ACT.

In its 2003 annual NCP report, the ACT provided further information on its authorisation system for persons engaged in agvet chemical spraying. This information shows that the ACT system for occupational licensing of spray operators does not vary from the arrangements recommended by the Victorian-led national review. Consequently, the imposition of these controls, to minimise potentially harmful operator and public health impacts and negative environmental effects, is consistent with the public benefit justifications established by the review.

The Northern Territory did not list any 'control of use' legislation for NCP review. In 2003, it released for discussion a draft Bill to control the use of agricultural and veterinary chemicals, fertilisers and stock foods. The proposed changes would bring the legislation into line with other Australian jurisdictions. Stakeholders were invited to comment on the changes, and the Northern Territory expects to pass the new legislation in 2003.

Assessment

National chemical registration scheme

The following issues from the review of the national registration scheme remain outstanding:

- cost recovery;

- the licensing of agricultural chemical manufacturers;

- the contestability of chemical assessment services; and

- compensation for third party access to chemical assessment data.

Because these issues have not been resolved, the Council assesses the Commonwealth Government as not having met its CPA obligations in relation to legislation establishing the national agvet chemicals code. Because reform of the national code has been delayed, reform of State and Territory legislation that automatically adopts the national code has not been completed and the Council therefore assesses State and Territory Governments as not having met their CPA obligations in relation to the following legislation:

New South Wales — *Agriculture and Veterinary Chemicals (New South Wales) Act 1994*.

Victoria — *Agriculture and Veterinary Chemicals (Victoria) Act 1994*.

Queensland — *Agricultural and Veterinary Chemicals (Queensland) Act 1994*.

Western Australia — *Agricultural and Veterinary Chemicals (Western Australia) Act 1994*.

South Australia — *Agricultural and Veterinary Chemicals (South Australia) Act 1994*.

Tasmania — *Agricultural and Veterinary Chemicals (Tasmania) Act 1994*.

The Northern Territory — *Agricultural and Veterinary Chemicals (Northern Territory) Act*.

The Council recognises, however, that individual jurisdictions are not reasonably in a position to progress appropriate reforms until outstanding national processes are resolved.

The Council previously identified one additional public interest issue, the Ministers' decision to retain, as part of the registration process, an assessment of whether the efficacy claimed by a supplier is appropriate. In the 2002 NCP assessment, the Council noted its understanding that other measures control the health and environmental risks arising from chemical use. The Council also questioned why consumers are unable to judge the efficacy they prefer and expressed its concern that efficacy assessment may raise the cost of chemicals and reduce consumer choice. The Council asked governments to provide for the 2003 NCP assessment a more detailed explanation of efficacy assessment's benefits, costs and alternatives.

Governments replied that limiting the Australian Pesticides and Veterinary Medicines Authority's consideration to "truth" (as per the review recommendation) would mean that the Australian Pesticides and Veterinary Medicines Authority would not directly assess flow-on or induced effects of the use of a chemical with an efficacy level as determined by the registrant. A chemical registrant could, for example, submit to the Australian Pesticides and Veterinary Medicines Authority that a chemical be marketed with a 45 per cent efficacy level and the authority could then assess efficacy without considering whether the efficacy level is appropriate.

Governments consider that such an approach would negate the wider community considerations of a product's efficacy by inducing risks to public health, risks to occupational health and safety, and an adverse impact on the environment. In assessing these risks, the Australian Pesticides and Veterinary Medicines Authority measures efficacy against standards that it has established — many of which are recognised internationally and practiced by several other nations, including OECD member countries.

Governments consider that assessing the 'appropriateness' of efficacy is necessary to meet and maintain the legislative objectives and Australia's international obligations, in relation to the protection of public health, the protection of occupational health and safety, the protection of the environment, international risk reduction and disease prevention. Given that the risks involved in using chemicals with inadequate efficacy may be considerable, and that the requirement for 'appropriateness' assessment does not appear to be a costly restriction, the Council considers that there is a net public interest case for retaining 'appropriateness' assessment.

'Control of use' legislation

In its 2002 NCP assessment, the Council assessed New South Wales as having met its CPA obligations in relation to the *Fertilisers Act 1985*, the *Pesticides Act 1978* (part 7), the *Stock (Chemical Residues) Act 1975*, and the *Stock Foods Act 1940*. The Council also assessed the ACT's application of the *Fertilisers Act 1904* (NSW) as compliant with NCP obligations.

Several jurisdictions are close to completing the reform of their 'control of use' legislation but have not passed legislation or drafted accompanying regulations. For these reasons, the Council assesses New South Wales (in relation to the Stock Medicines Act), Queensland, Western Australia, South Australia and Tasmania as not having met their CPA obligations in this area.

Victoria has implemented the reforms recommended by the national review with one exception — it has retained a licence condition that requires aerial sprayers to hold an approved insurance policy. Mandatory insurance restricts entry to the market and may raise the price of services. The review recommendations which relate to aerial spraying are being addressed by the Agricultural and Veterinary Chemicals Policy Committee Aerial Spraying Licensing Group. The Council understands that this group is considering whether the licence condition is in the public interest. The Council assesses Victoria as not having met its CPA clause 5 obligations on relation to 'control of use' legislation, but notes that Victoria's remaining restriction is under national consideration.

The ACT implemented all recommended reforms to its 'control of use' legislation. The Council thus assesses the ACT as having met its CPA clause 5 obligations in this area.

The Northern Territory has 'control of use' provisions in the *Poisons and Dangerous Drugs Act*. These provisions will be repealed with the commencement of new legislation to control the use of agvet chemicals, fertilisers and stock foods. The new legislation will bring the Northern Territory's arrangements into alignment with those of other jurisdictions. The new legislation will be subject to the gatekeeper process (see chapter 13, volume 2) and is not expected to be introduced until late in 2003. The Council thus assesses the Northern Territory as not having met its CPA clause 5 obligations in this area.

Table 1.16: Review and reform of legislation regulating agvet chemicals

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Agricultural and Veterinary Chemicals Code Act 1994*	Prohibition on chemicals being supplied or held unless approved or exempt; requirement for sole approval of chemicals by the Australian Pesticides and Veterinary Medicines Authority; imposition of the same approval costs on low risk chemicals as on high risk chemicals; provision for assessment services to be purchased from only certain authorities; prohibition on approval of chemicals unless the Australian Pesticides and Veterinary Medicines Authority is satisfied of appropriate efficacy; licensing of chemical manufacturers; provision for data to be protected from rivals unless compensation is paid	Review by review team of economic and legal consultants was completed in 1999. It recommended: • retaining the monopoly on approval of chemicals; • lowering regulatory costs for low risk chemicals; • including principles in the Agricultural and Veterinary Chemicals Code to guide the inclusion/exclusion of chemicals in the national registration scheme; • accepting alternative suppliers of assessment services; • limiting the efficacy review to the truth of the claimed efficacy; • recovering Australian Pesticides and Veterinary Medicines Authority costs via a simple flat rate sales levy and cost-reflective application fees; • retaining the licensing of veterinary chemical manufacturers; • removing the licensing of agricultural chemical manufacturers until a case is made; and • applying TPA third party access pricing to data protection provisions.	Intergovernmental response to review was completed in 2000. It supported all recommendations except: • removing the provision for licensing of agricultural chemical manufacturers; and • limiting the efficacy review. In 2003 the Council accepted additional material supporting the public benefit in retaining appropriateness assessment by the Australian Pesticides and Veterinary Medicines Authority. Working groups at the national level are considering the implementation of several other review recommendations.	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth (continued)	*Agricultural and Veterinary Chemicals (Administration) Act 1992*	Prohibition on importing chemicals unless approved or exempt; requirement of minimum qualifications and experience for analysts; fees and levies that impose an entry barrier and discriminate among companies	See *Agricultural and Veterinary Chemicals Code Act 1994* above	See *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
New South Wales	*Agriculture and Veterinary Chemicals (New South Wales) Act 1994*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
	Fertilisers Act 1985	Registration of brand names; composition standards; labelling requirements	Review of Act and other State agvet legislation by a government/industry panel was completed in 1998. It recommended: • removing brand name registration and minimum content requirements; and • retaining heavy metal limits and labelling requirements.	Act was amended in November 1999 to implement review recommendations.	Meets CPA obligations (June 2002)
	Pesticides Act 1978 (part 7)	Controls on the sale, supply, use and possession of pesticides; controls on the aerial application of pesticides and residue in foodstuffs	1998 review recommended expanding certain powers to provide for consistent controls on chemical-affected plants and animals.	Act was repealed and replaced by the *Pesticides Act 1999*, in line with the review recommendations.	Meets CPA obligations (June 2002)

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Stock (Chemical Residues) Act 1975*	Restrictions on the sale, movement or destruction of chemically affected stock	1998 review recommended retaining all existing restrictions that relate to detecting and controlling chemical-affected stock and controlling affected stock fodder and land.	No reform is required. This Act, the *Fertilisers Act 1985* and the *Stock Foods Act 1940* are to be replaced by new legislation.	Meets CPA obligations (June 2002)
	Stock Foods Act 1940	Labelling controls; limits on foreign ingredients	1998 review recommended retaining content labelling requirements and foreign ingredient content limits.	No reform is required. To be replaced by new legislation.	Meets CPA obligations (June 2002)
	Stock Medicines Act 1989	Prohibition on unregistered chemicals from being held or used on food-producing stock unless prescribed by a veterinary surgeon; sets minimum qualifications and experience for analysts; restrictions on advertising	1998 review recommended: • retaining restrictions on the possession and use of certain stock medicines; • retaining mandatory disclosure of sale of treated stock and stock food; and • reviewing advertising restrictions following completion of the national review of drugs, poisons and controlled substances legislation.	No reform is required. To be replaced by new legislation that will remove advertising restrictions. Introduction of the new legislation has been delayed due to delay in establishing the national agvet chemicals code.	Review and reform incomplete
Victoria	*Agriculture and Veterinary Chemicals (Victoria) Act 1994*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Agriculture and Veterinary Chemicals (Control of Use) Act 1992*	Conditions on the use of off-label use of chemicals; exemption of veterinary surgeons from many controls; provision for licensing of spray contractors	For national review, see *Agricultural and Veterinary Chemicals Code Act 1994* above. Review recommended: • developing a nationally consistent approach to off-label use; • retaining the veterinarian exemption for veterinary chemicals but not agricultural chemicals; • licensing spraying businesses subject to the maintenance of records, the employment licensed persons and the provision of necessary infrastructure; • licensing persons who spray for fee or reward, subject to the accreditation of their competency and only if they work for a licensed business; • exempting from licensing those persons who spray on their own land.	Intergovernmental response was completed in 2000. Ministers established a task force to develop a nationally consistent approach to 'control of use' regulation. The task force is still considering off-label use. A working party is harmonising aerial sprayer licensing. Other reforms are being implemented by States and Territories. In 2001, Victoria: • removed the veterinarian exemption for agricultural chemicals; • amended its sprayer licensing regulation but retained mandatory insurance (an issue now under consideration by a national working party); and • recognised interstate licences.	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Agricultural and Veterinary Chemicals (Queensland) Act 1994*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
	Agricultural Chemicals Distribution Control Act 1966	Licensing of spray contractors	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. Results of the national review were included in a more general State review of legislation.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. Licensing amendments are expected to be proclaimed in October 2003.along with amendments to the Act's regulation. .	Review and reform incomplete
	Chemical Usage (Agricultural and Veterinary) Control Act 1988	Placing of conditions on off-label use of chemicals; exemption of veterinary surgeons from various controls	See *Agricultural Chemicals Distribution Control Act 1966* above	Act was amended in 2003 to give effect to review recommendations.	Meets CPA obligations (June 2003)
Western Australia	*Agriculture and Veterinary Chemicals (Western Australia) Act 1995*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction.	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
	Agricultural Produce (Chemical Residues) Act 1983	Restriction on the sale, movement or destruction of chemically affected produce; minimum qualifications for analysts	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. The Western Australian Act is to be replaced by the Agricultural Management Bill which is being drafted.	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Aerial Spraying Control Act 1966*	Provision for licensing of aerial spray contractors	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. The Western Australian Act is to be replaced by the Agricultural Management Bill, which is being drafted.	Review and reform incomplete
	Veterinary Preparations and Animal Feeding Stuffs Act 1976	Requirement for premises and products to be registered; restrictions on packaging and labelling; sets minimum qualifications for analysts; advertising restrictions	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above.	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. The Western Australian Act will be amended by the Veterinary Preparation and Animal Feeding Stuffs Bill 2003, which was introduced to Parliament in May 2003.	Review and reform incomplete
South Australia	*Agricultural and Veterinary Chemicals (South Australia) Act 1994*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Agricultural Chemicals Act 1955*	Requirement that chemicals be sold with registered label; requirement that chemicals be used as per label or Ministerial directions	Act is to be replaced by new legislation. Review of legislative proposal found all proposed restrictions to be in the public interest.	*The Agricultural and Veterinary Products (Control of Use) Act 2002* repealed previous legislation and implemented competition reforms. Regulations are yet to be finalised.	Review and reform incomplete
	Stock Foods Act 1941	Requirement that stock foods be sold with label or certificate specifying chemical analysis; prohibition on the feeding of seed grain to stock	See *Agricultural Chemicals Act 1955* above	See *Agricultural Chemicals Act 1955* above	Review and reform incomplete
	Stock Medicines Act 1939	Requirement that stock medicines be registered	See *Agricultural Chemicals Act 1955* above	See *Agricultural Chemicals Act 1955* above	Review and reform incomplete
Tasmania	*Agricultural and Veterinary Chemicals (Tasmania) Act 1994*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
	Agricultural and Veterinary Chemicals (Control of Use) Act 1995	Prohibition on chemicals not registered under the Agricultural and Veterinary Code from being used; licensing of spray contractors; requirement of approval of indemnity insurance	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above	See Victoria's *Agriculture and Veterinary Chemicals (Control of Use) Act 1992* above. The Legislative Council is yet to pass amendments implementing review recommendations.	Review and reform incomplete

(*continued*)

Table 1.16 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Pesticides Act 1989*	Prohibition on the use of unregistered pesticides		Act was repealed and replaced by the *Environmental Protection Act 1997*. The 1997 Act prohibits off-label use (unless with a permit) and requires authorisation of chemical use. The authorisation arrangements do not vary from the arrangements recommended by the Victorian-led national review.	Meets CPA obligations (June 2003)
	Fertilisers Act 1904 (NSW) in its application in the Territory	Prohibition on the sale of fertilisers without a statement of composition	Review by officials was completed in 1999.	Act is to be retained.	Meets CPA obligations (June 2002)
Northern Territory	*Agricultural and Veterinary Chemicals (Northern Territory) Act*	Importation of the Agricultural and Veterinary Chemicals Code into the State jurisdiction	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	See Commonwealth *Agricultural and Veterinary Chemicals Code Act 1994* above	Review and reform incomplete
	Poisons and Dangerous Drugs Act	Restrictions on the use of agvet chemicals		New *Agricultural and Veterinary Chemicals(Control of Use) Act* will be introduced and subject to gatekeeper requirements. Extensive public consultation was undertaken. Draft Bill is under consideration by the Government.	Review and reform incomplete

Farm debt finance

Under the *Farm Debt Mediation Act 1994* New South Wales regulates the resolution of disputes that may arise between a farmer and his/her creditor where a farmer defaults on a secured debt and the creditor proposes to enforce the mortgage securing the debt by, for example, taking possession of the mortgaged property.

Legislative restrictions on competition

The Act prohibits lenders from enforcing farm mortgages in default without first offering defaulting farmers the option of mediation. Farmers have twenty-one days notice in which to accept mediation. The lender must not enforce the mortgage until the New South Wales Rural Assistance Authority is satisfied that either:

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

These obligations on lenders restrict competition in the market for farm debt finance by raising the costs and risks of lending to farmers.

The Act also restricts competition by providing for the accreditation of mediators.

Regulating in the public interest

As noted in Volume 2 Chapter 6, regulation of the financial sector is designed to facilitate the creation and movement of capital while ensuring market participants act with integrity and protecting consumers. In particular, it is argued that financial products are complex and consumers have less information than financial service providers. Regulation takes several forms, including conduct and disclosure requirements which reduce information barriers and costs.

In addition, all entities which are licensed to provide financial services to retail clients must have a dispute resolution system in place to deal with consumer complaints about any of the financial products and services provided under the licence.

Such regulation may encourage competition, for example by promoting consumer confidence. It may also impose some costs, however. In particular,

legislative restrictions on business activities may, by restricting market entry and competitive conduct, result in increased compliance costs for businesses and have an impact on product innovation and consumer choice.

Review and reform activity

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

- the lender be prohibited from enforcing the mortgage for twelve months where the lender, participating in mediation, is found not to have acted in good faith; and
- decisions of the Rural Assistance Authority in relation to mandatory farm debt mediation be subject to review by the Administrative Decisions Tribunal.

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

Assessment

The Council assesses that New South Wales has not met its CPA clause 5 obligations arising from the Farm Debt Mediation Act. The NCP review provided insufficient evidence to support its recommendations to impose a twelve month penalty where lenders are found not to have participated in mediation in good faith, and review by the Administrative Decisions Tribunal of decisions by the Rural Assistance Authority.

As noted by the review, a twelve month penalty could be considered to interfere with lenders' substantive rights, and increases the risks of lending to farmers in New South Wales. The review did not show that failure by lenders to participate in mediation in good faith had been a significant problem. Similarly, allowing review by the Administrative Decisions Tribunal of decisions by the Rural Assistance Authority subjects lenders and farmers to risks of further delay and increased costs, and the review did not show that the Authority's own internal review procedures were inadequate. Both of these review proposals, now implemented, are likely to increase the costs to the community of restricting competition between farm lenders by mandating the mediation of farm debt disputes.

In relation to the principle restriction — mandatory mediation — the Council understands that the Government has a social objective of the fair resolution of farm debt disputes. However, the review did not adequately establish its case that the restriction improves fairness. It did not show that, without mandatory mediation, lenders would act unconscionably towards farmers to a significant extent. Nor did it show why the community might regard farmers as deserving more assistance than other small businesses to resolve debt disputes. Like other small businesses, farmers enter into finance contracts freely, and have the opportunity to seek professional advice – as they often do in preparing business plans (for finance applications and government assistance applications) and managing tax obligations.

The review was also unconvincing in arguing that mandatory mediation improves the efficiency of the farm finance market. It argued that farmers in financial difficulty are often reluctant to initiate negotiations with lenders, and that without mandatory mediation this leads to missed opportunities to avoid mortgagee sales, more court proceedings and hence higher costs for both farmers and lenders. However, the review did not show better outcomes from mandatory mediation by, for example, comparing:

- rates of foreclosure of farm loans in New South Wales with other states; or
- farm finance interest rates in New South Wales with other states (other things being equal lenders will recover higher costs through higher interest rates – farm finance interest rates in New South Wales should be lower if mandatory mediation lowers lenders' costs).
- Table 1.17 summarises New South Wales progress in review and reform of legislation regulating mediation of farm debt disputes.

Table 1.17: Review and reform of legislation regulating mediation of farm debt disputes

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Farm Debt Mediation Act 1994*	Mediation is mandatory before lenders may enforce security on farm debt in default.	Review by officials and industry representatives completed December 2000, recommending retention of mandatory mediation, and a variety of procedural and other amendments.	Act amended accordingly in October 2002.	Does not meet CPA clause 5 (June 2003).

Bulk Handling

The supply of off-farm bulk handling and storage services to grain growers has traditionally been restricted to statutory monopolies in most States. New South Wales repealed its regulation in 1992. Victoria replaced its regulation with the *Grain Handling and Storage Act 1995* which regulates pricing and third party access to port and related infrastructure. Queensland does not directly regulate the supply of bulk handling and storage services.

At the time the CPA commenced only Western Australia and South Australia restricted competition in the supply of bulk handling and storage services.

Legislative restrictions on competition

Western Australia and South Australia restricted competition via the *Bulk Handling Act 1967* and *Bulk Handling of Grain Act 1955* respectively. These Acts:

- prohibited anyone other than the statutory monopoly handler from receiving or delivering grain in bulk, and requiring it to accept all grain tendered;
- required the statutory monopoly handler to charge uniform prices for its services irrespective of cost, and to provide facilities at points specified by the Minister;
- prohibited the statutory monopoly handler from trading in grain; and
- allowed the Government to guarantee the liabilities of the statutory monopoly handler.

Table 1.18 summarises Western Australia's and South Australia's progress in the review and reform of legislation regulating bulk grain handling and storage.

Regulating in the public interest

The main policy objective of legislative regulation in this area was to provide equal access to costly bulk grain handling and storage for all grain growers no matter where they were located. Competition was excluded so the handler could remain viable while charging a uniform price that was above cost for some growers but below cost for others.

Various efficiency costs must be weighed against this equity benefit. Where prices do not reflect costs, resources tend to be allocated away from uses that return the most value to society. From grain handling and storage regulation,

for example, growers grow grain where other land uses would generate a better overall return, and vice versa. The monopoly grain handler tends to overinvest in some areas and underinvest in others. It also is less likely to respond as quickly to change in grower and buyer preferences.

The net benefit (or cost) of this form of regulation partly depends on how much society values equity among grain growers. This value can be difficult to ascertain, but evidence from other fields of agricultural policy reveals a limited appetite for support of some producers at the expense of others and/or the wider community. In any case, such special assistance can be made available in ways that do not restrict competition in the bulk grain handling and storage market — for example, via cash grants funded from either compulsory levies or general taxation. Legislative restrictions on this market are unlikely, therefore, to serve the public interest.

A public interest case for regulation may exist where an essential facility may not be efficiently duplicated. Port facilities for grain loading may fall into this category in some circumstances. Owners of such a facility have substantial market power to raise prices above cost and to restrict competition in allied markets. Regulation generally gives third parties the right to access such facilities and provides a mechanism for negotiating or otherwise determining the price and conditions of their use. Victoria's *Grain Handling and Storage Act 1995* is an example of this regulation specific to grain handling and storage. Part IIIA of the TPA provides a generic third party access regulatory regime.

There has been a recent surge in competitive investment in port handling for grain infrastructure. This suggests that economies of scale in the industry may be less important than once thought and, therefore, that market power is dissipating.

Western Australia

Review and reform activity

The Bulk Handling Act's prohibition on anyone other than Cooperative Bulk Handling Limited (CBH) receiving and delivering grain expired on 31 December 2000.

The remainder of the Act was reviewed by the Department of Agriculture in 2002. The review recommended that the State Government repeal all remaining restrictions on competition except the requirement that it accept all grain tendered to it. It also recommended that the State Government retain the provision requiring CBH to allow anyone to use its port facilities on payment of prescribed charges and that it continue to monitor the need to establish an access regime for these facilities.

The Act was amended accordingly by the *Bulk Handling Repeal Act 2002.*

Assessment

The Council assesses that Western Australia has met its CPA clause 5 obligations arising from the Bulk Handling Act. The continued requirement that CBH accept all grain tendered to it is most unlikely to restrict competition as it does not prevent new entry into the bulk handling and storage services market and, as CBH is free to determine its charges and the location and standard of facilities, it does not in practice prevent CBH from responding to new entry, actual or threatened, through, for example, changes to its service prices or its receival site network.

In relation to port facilities it is open to anyone not satisfied with CBH's voluntary terms of access to invest in alternative facilities or to seek to have CBH's facilities declared under Part IIIA of the TPA.

South Australia

Review and reform activity

South Australia reviewed and repealed its Bulk Handling of Grain Act in 1998.

Assessment

The Council assessed in 2002 that, with the repeal of the Act, South Australia had met its related CPA clause 5 obligations.

Table 1.18: Review and reform of legislation regulating bulk grain handling and storage

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Bulk Handling Act 1967*	Sole right to receive and deliver grain (now expired). Obligation to charge uniform prices and to receive all grain tendered.	Review in 2002 by Department of Agriculture recommended removal of uniform pricing obligation but retention of obligations in relation to grain receival and port facility third party access.	Act amended accordingly in 2002.	Meets CPA obligations (June 2003).
South Australia	*Bulk Handling of Grain Act 1955*	Sole right to receive and deliver grain. Obligation to charge uniform prices and to receive all grain tendered.	Review was completed in 1998, recommending repeal.	Act was repealed in 1998.	Meets CPA obligations (June 2002).

Food

The food industry is a core activity in the Australian economy, involving primary producers and their suppliers, and processing, transport, export, import and retailing activities. Food production from the farming and fisheries sector was worth an estimated A$29 billion in 2000-01, total sales by the food processing industry were worth an estimated A$55 billion and food imports were worth A$4.8 billion (AFFA 2002).

Legislative restrictions on competition

Commonwealth, State and Territory governments regulate the processing and sale of food in Australia. The Commonwealth's *Food Standards Australia New Zealand Act 1991* (formerly the *Australia New Zealand Food Authority Act 1991*) establishes Food Standards Australia New Zealand, or FSANZ (formerly the Australia New Zealand Food Authority, or ANZFA) which is responsible for developing, varying and reviewing the Food Standards Code. The code sets standards for the composition and labelling of food. In addition, FSANZ coordinates national food surveillance and recall systems, conducts research, assesses policies about imported food and develops codes of practice with industry.

The Commonwealth Government also controls the importation of foods under the *Imported Food Control Act 1992*, which does not restrict who may import foods into Australia, but requires that imported food:

- comply with Australian public health and food standards; and
- be subject to a risk assessment based program of inspecting and testing.

The Australian Quarantine Inspection Service administers the program with scientific support from FSANZ. Australian Government Analytical Laboratories is the sole provider of testing services.

States and Territories regulate food hygiene management via their food Acts (the *Health Act 1911* in Western Australia) and often also via legislation that is specific to the dairy and meat industries. This legislation varies widely but generally provides for the approval of food premises, the authorisation of officers to inspect food and premises, and various food safety offences, including failure to comply with the Food Standards Code. Variation in regulation across jurisdictions hampers competition among suppliers in national food markets.

Regulating in the public interest

Food containing microbial, physical or chemical contamination can pose a serious threat to human health and safety. Some consumers also have particular dietary needs, such as those arising from food allergies. Food suppliers generally have strong incentives to produce safe food of the type that consumers want and for which they will pay. Incentives can be weak, however, where:

- contamination is often not evident to the consumer until after consumption; and
- suppliers of contaminated food cannot be forced to compensate consumers, given practical difficulties in verifying food quality and linking illness with a specific supplier.

In addition, food safety incidents can damage consumer confidence in broad classes of food and thus harm other suppliers. Governments therefore endeavour through regulation to deliver a level of food safety that is acceptable to the community.

Food safety regulation is not costless, however. It imposes costs on businesses by requiring, for example, specified premises design and equipment, staff training, and up-to-date knowledge of changes in regulation. These and other costs are passed on to consumers through higher prices and reduced choices. Food regulation should therefore:

- focus on protecting public health, by intervening only on the basis of sound science and risk assessment;
- hold food suppliers responsible for food safety, by setting simple and clear performance standards and by allowing suppliers the freedom to choose how to meet these standards; and
- unless necessary to protect public health:
  - not impose significant barriers to entry by suppliers into food markets;
  - not impose different regulatory burdens on suppliers of competing food products; and
  - allow competition in the delivery of food safety services such as auditing and testing.

Review and reform activity

The regulation of food production, processing and distribution has been subject to substantial review and reform activity since the mid-1990s. The major initiatives are outlined below.

In 1994 the Australia New Zealand Food Standards Council, comprising health Ministers from the Commonwealth Government, States, Territories and New Zealand, commissioned ANZFA to review each standard of the Australian Food Standards Code and the New Zealand Food Regulations. These standards covered food composition and labelling. The aim was to produce a new joint Food Standards Code that was more focused, more coherent and less prescriptive.

The council adopted the new joint Food Standards Code in November 2000 — including two new labelling standards (percentage labelling of key ingredients and nutritional panels) — and agreed to a two-year implementation period to allow businesses to minimise the associated costs. It also asked ANZFA to develop practical strategies to lower business implementation costs.

In 1995, the Australia New Zealand Food Standards Council commissioned ANZFA to develop nationally uniform food safety standards — the regulation of safe food practices, premises and equipment — to replace inconsistent and often out-of-date food hygiene regulations of the States and Territories, and New Zealand. In consultation with the States and Territories, and industry, ANZFA drafted four standards: Interpretation and Application; Food Safety Programs; Food Safety Practices and General Requirements; and Food Premises and Equipment. In July 2000, the council adopted three of the new food safety standards, with effect from February 2001. It deferred adoption of the Food Safety Programs standard pending further research on its effectiveness and efficiency.

In 1996, the Australia New Zealand Food Standards Council asked ANZFA to coordinate a review of State and Territory food Acts and related legislation. This review resulted in a model food Bill. The Bill's accompanying regulation impact statement, including an NCP review, identified the following key restrictions on competition:[9]

- the registration of food businesses;
- the licensing of certain high risk food premises;
- the licensing of laboratories and analysts to test food samples; and
- the licensing of food safety auditors to audit food safety programs.

The regulation impact statement argued that these restrictions impose the minimum necessary cost to achieve the objectives of the Bill.

In March 1997, following consultation with the States and Territories, the Commonwealth Government commissioned the Blair Review, which examined all aspects of food regulation (including competitive restrictions

[9] The model food Bill uses 'notification' to mean registration and 'registration' or 'approval' to mean licensing.

contained in the Australia New Zealand Food Authority Act) with the object of improving the efficiency of food regulation while protecting public health. The Blair Report in August 1998 recommended that:

- the Commonwealth, States and Territory governments develop a national uniform food safety regulatory framework that meets identified principles of effective and efficient regulation;
- the Commonwealth Government amend the Australia New Zealand Food Authority Act to clarify its objective; and require ANZFA to consider whether the regulation's benefits to the community outweigh the costs and whether alternatives to the regulation would be more cost-effective in achieving such benefits;
- all relevant government agencies make contestable services such as end-product inspection, auditing and laboratory analysis; and
- regulators and industry develop an integrated food safety auditor accreditation framework.

In 1999, the Commonwealth Government amended the Australia New Zealand Food Authority Act as recommended.

The model food Bill

In November 2000, CoAG signed an Intergovernmental Food Regulation Agreement. Under the agreement, the States and Territories undertook to make their food legislation consistent with the core provisions of the model food Bill within 12 months. The core provisions relate mainly to food handling offences and to the adoption of the Food Standards Code. Adoption of the noncore provisions (which include the registration and licensing schemes identified above) is voluntary. States and Territories may also retain other provisions in their legislation that are not in conflict with the enacted provisions of the model food Bill.

State and Territory governments are at various stages of amending or replacing their food legislation to adopt the model food Bill. Victoria, Queensland, South Australia and the ACT modified their food legislation in 2001. Where these jurisdictions adopted noncore provisions they considered that these were necessary to ensure adequate food safety standards.

New South Wales re-introduced the Food Bill 2002 to Parliament in 2003. The Bill contains all core provisions of the model food Bill, which relate primarily to food handling offences and the application in New South Wales of the Food Standards Code. The Food Bill requires laboratories, analysts and food safety auditors to be approved for the purposes of carrying out analyses. (A nonapproved person is not prohibited from carrying out those activities, but their analysis results will not be recognised for the purposes of the proposed Act.) The Government considers that there is a public benefit in

maintaining high standards of food safety by ensuring the competence and integrity of persons carrying out analyses.

Western Australia is preparing a food Bill that will adopt the Food Standards Code and incorporate all its food hygiene regulations. Tasmania repealed its *Public Health Act 1962* and replaced it with the *Food Act 1998*. Following developments at the national level, Tasmania will replace the Food Act with the yet to be proclaimed *Food Act 2003*, which is based on the model food legislation.

The Northern Territory is yet to introduce the necessary legislation to adopt the model Bill. Western Australia is intending to introduce a food Act to replace the relevant sections of its Health Act. The new Act will give effect to the model food Bill.

Food safety in the dairy and meat industries

Most States and Territories undertook the review and, where appropriate, reform of their legislation relating to food safety in the dairy and meat industries. Developments since the 2002 NCP assessment are outlined below.

New South Wales placed the licensing and inspection provisions from its dairy and meat legislation into Regulations developed under the *Food Production Safety Act 1998*. A review of the Act in 2002 found the dairy and meat food safety schemes to be effective. The review was not a specific NCP review, but made a number of recommendations that would result in significant cost savings for both the government and industry. The report was provided to Parliament for tabling and public release on 30 December 2002.

Victoria accepted all but one of the recommendations of the review of its *Meat Industry Act 1993*. The Government did not accept that the Minister should be unable to direct the Victorian Meat Authority on the circumstances of particular businesses. It agreed, however, to the disclosure of such directions and amended the Act accordingly.

Queensland developed new food safety schemes under its *Food Production (Safety) Act 2000*. These schemes contain no restrictions on competition because they implement food safety standards in a manner consistent with the CoAG Agreement.

Western Australia intends to repeal all its food hygiene Regulations and include these in its foreshadowed Food Act. Drafting instructions have been prepared for the Bill.

South Australia is preparing a draft Bill for dairy food safety legislation that it intends to release for public consultation in August 2003. The framework established by the Bill is similar to that developed by Victoria for the Victorian *Dairy Act 2000* which was assessed as meeting CPA criteria. Amendments to the *Meat Hygiene Act 1994* to implement review recommendations are likely to be introduced in the second half of 2003,

following the development of a memorandum of understanding among agencies involved in inspections.

Tasmania has completed the review and reform of its legislation relating to food safety in the dairy and meat industries. It retained the licensing of producers, processors and manufacturers under the *Dairy Industry Act 1994* to ensure quality standards. Amendments to the *Meat Hygiene Act 1985* were passed in 2001 following a review of the Act. The amendments provide for a simplified licensing system, acknowledge the Australian Meat Standards and remove overlap with building regulations.

Imported food

The Commonwealth Government reviewed the *Imported Food Control Act 1992* in 1998. The review concluded that the existing regulatory arrangements overall deliver a net benefit to the community and, therefore, should be retained. It also found, however, that the efficiency and effectiveness of the arrangements could be improved, such as by encouraging importers to take co-regulatory responsibility for food safety. The review recommended amending the Act to allow the Australian Quarantine Inspection Service to:

- enter into quality assurance-based compliance agreements with importers;
- expand the use of certification agreements with the food authorities of other countries; and
- tailor inspection strategies and rates to reflect importer performance and quality assurance agreements.

The review also recommended that the Commonwealth Government change its policy to permit suitably qualified laboratories to test imported food in all risk categories. On 29 June 2000, the Government announced that it accepted all of the recommendations. It then implemented eight of the 23 recommendations. The outstanding recommendations involve legislative change and major changes to information technology systems. Work on changing the IT systems has commenced and amendments to the Act were introduced to Parliament in 2002.

Assessment

Commonwealth

In its 2002 NCP assessment, the Council assessed the Commonwealth Government as having met its CPA obligations to review and reform the Food Standards Australia New Zealand Act, but not its CPA clause 5(5) obligation in relation to the new joint Food Standards Code, because the Government presented no evidence of a public interest case for the proposed code. The

Commonwealth Office of Regulation Review found the cost–benefit analysis in the accompanying regulation impact statements to be inadequate and, therefore, not substantively compliant with CoAG's principles and guidelines for national standard setting and regulatory action. The Australia New Zealand Food Authority has addressed this noncompliance by a revised approach to measuring regulatory impacts that more fully considers business concerns including implementation costs.

The Council assesses the Commonwealth Government as not having met its CPA clause 5 obligations in relation to the Imported Food Control Act because the recommended reforms are still to be implemented. The Council assesses the Government as having met its CPA clause 5 obligations in relation to the Food Standards Code.

States and Territories

Implementation of the model food Bill

The Council assesses Victoria, Queensland, South Australia and the ACT as having met their CPA clause 5 obligations in relation to model food legislation. New South Wales, Western Australia, Tasmania and the Northern Territory have yet to pass the relevant legislation so they are assessed as not having met their CPA obligations in this area.

Legislation specific to the dairy and meat industries

In its 2002 NCP assessment, the Council assessed the following jurisdictions as having met their CPA obligations in relation to the listed legislation:

- Victoria — the *Dairy Industry Act 1992*;
- The ACT — the *Meat Act 1932*; and
- Northern Territory — the *Meat Industries Act 1996*.

Since 2002, New South Wales has completed a non-NCP review of its food safety legislation in the dairy and meat industries. 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 obligations in this area.

Victoria, Queensland and Tasmania have completed the review and reform of food safety legislation in their dairy and meat industries, and the Council thus assesses these jurisdictions as having met their CPA obligations in this area. The Council assesses Western Australia as having not complied with its CPA obligations because it did not complete review and reform activity in this area. The Council assesses South Australia too as not having met its CPA obligations, although the passage of the State's foreshadowed legislation would satisfy obligations in relation to dairy and meat safety legislation.

Table 1.19 details governments' progress in reviewing and reforming food regulation.

Table 1.19: Review and reform of food regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Food Standards Australia New Zealand Act 1991*(formerly the *Australia New Zealand Food Authority Act 1991*)	Establishment of FSANZ (now ANZFA), which develops food standards, coordinates food surveillance and recall systems, and develops codes of practice with industry	Blair review of food regulation was completed in 1998. It recommended amending the Act to: • clarify regulatory objectives; • require ANZFA, in carrying out its regulatory functions, to apply an NCP test.	Act was amended by the *Australia New Zealand Food Authority Amendment Act 1999* to address the key recommendations.	Meets CPA obligations (June 2001)
	Food Standards Code	Standards for preparation, composition and labelling of food	ANZFA developed a new joint code including new standards on ingredient and nutritional labelling which underwent regulatory impact analysis.	The new joint Australia-New Zealand Food Standards Code was implemented on 20 December 2000. It was introduced under transition arrangements that allowed the old food standards codes of Australia and New Zealand to remain in force for two years. These codes were subsequently repealed on 20 December 2002	Meets CPA obligations (June 2003)

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Commonwealth (continued)	*Imported Food Control Act 1992*	Requirement that imported food meet Australian standards; subjection of imported food to risk-based inspection and testing; provision for testing to be performed only by the Australian Government Analytical Laboratories	Review was completed in 1998. It recommended: • recognising quality assurance processes of importers; • tailoring inspection rates and strategies to importer performance and agreements on certification and compliance; and • permitting qualified laboratories to test imported food.	The Government accepted all recommendations in June 2000. Some were implemented administratively while others await legislative change. Amendments have been drafted.	Review and reform incomplete
New South Wales	*Food Act 1989*	Provision for various food safety offences; provision of wide powers to make orders prohibiting or requiring conduct	National review was completed in 2000. It produced the model food Bill — a uniform regulatory framework for States and Territories. The Bill's core provisions adopt the Food Standards Code and set out offences. Its noncore provisions include: • the registration of all food businesses; • the approval of food premises; and • the contestable provision of audit and laboratory services subject to approval of providers.	All States and Territories agreed in November 2000 to adopt core provisions of the model food Bill by November 2001. New South Wales has introduced amendments in 2003.	Review and reform incomplete
	Dairy Industry Act 1979	Licensing of farmers and processors	Review was completed in 1997.	Licensing and inspection provisions were replaced by the Food Production (Dairy Food Safety Scheme) Regulation 1999.	Meets CPA obligations (June 2003)

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales (continued)	*Meat Industry Act 1987*	Licensing of farmers and processors	Review was completed in 1998.	Licensing and inspection provisions were placed in the Food Production (Meat Food Safety Scheme) Regulation 2000.	Meets CPA obligations (June 2003)
Victoria	*Food Act 1984*	Provision for various food safety offences; prescribes food safety standards; registration of food premises and vehicles; requirement of food safety programs for declared food premises/vehicles; approval of auditors	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt core provisions of the model food Bill by November 2001. Victoria amended its 1984 Act via the *Food (Amendment) Act 2001* to adopt provisions of the model food Bill.	Meets CPA obligations (June 2003).
	Dairy Industry Act 1992	licensing of farmers, processors, distributors and carriers	Review was completed in 1999 by independent consultant. It recommended retaining some food safety related restrictions but removing the public sector monopoly on the audit of food safety programs.	The Government accepted all review recommendations. The Act was repealed by the *Dairy Act 2000*, which establishes Dairy Food Safety Victoria.	Meets CPA obligations (June 2002)

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Meat Industry Act 1993*	Licensing of processing facilities and vehicles; requirement of quality assurance programs for certain premises; minimum qualifications for inspectors and minimum experience levels and qualifications for auditors	Review by consultant was completed in March 2001. It recommended: • retaining licensing, minimum qualifications for inspectors and minimum experience and qualifications for auditors; • improving the accountability of the Meat Industry Authority; and • prohibiting the discriminatory exercise of Ministerial powers.	The Government accepted all but the recommendation to circumscribe the Minister's power to direct the Victorian Meat Authority. Instead, the Government agreed to the disclosure of such directions. The Act was amended accordingly in 2001.	Meets CPA obligations (June 2003)
Queensland	*Food Act 1981*	Provision for various food safety offences; requirement that food to meet prescribed food standards; requirement for registration of food premises (under associated Regulations)	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt core provisions of the model food Bill by November 2001. Queensland amended its Act accordingly in 2001.	Meets CPA obligations (June 2003).
	Dairy Industry Act 1993	Provision for licensing of farmers and processors	Government/industry panel review was completed in 1998.	Licensing and inspection provisions were replaced from 1 July 2002 by the Dairy Food Safety Scheme under the *Food Production (Safety) Act 2000.*	Meets CPA obligations (June 2003)

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Meat Industry Act 1993*	Provision for food safety offences; minimum qualifications for meat safety officers; accreditation of processing facilities; provision of wide powers to make standards	Review was completed in 1999, recommending the development of new food safety standards (especially for high risk foods).	The Act was repealed and provisions for meat safety standards were included in the *Food Production (Safety) Act 2000*.	Meets CPA obligations (June 2003)
Western Australia	*Health Act 1911*	Provision for food safety offences; requirement that food meet prescribed standards	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. Western Australia is preparing a food Bill that will adopt the Food Standards Code.	Review and reform incomplete
	Health (Food Hygiene) Regulations 1993	Licensing of food processors and registration of premises; specification of safe food practices	Regulations are under way.	Western Australia intends to repeal all its food hygiene Regulations and include these in its foreshadowed Food Act.	Review and reform incomplete
	Health (Game Meat) Regulations 1992	Minimum qualifications for slaughterers; registration of field depots and processing facilities	Regulations are under way.	Western Australia intends to repeal all its food hygiene Regulations and include these in its foreshadowed Food Act.	Review and reform incomplete

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Food Act 1985*	Food standards	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. South Australia passed a new Food Act in July 2001.	Meets CPA obligations (June 2003)
	Dairy Industry Act 1992	Licensing of farmers, processors and vendors	Food safety provisions remain under review. Officials developed a discussion paper for new primary industry 'food safety' legislation that would incorporate provisions for the dairy industry.	New legislation is likely in the March 2004 session of Parliament.	Review and reform incomplete
	Meat Hygiene Act 1994	Requirement for accreditation of meat processors; requirement that meat inspectors and auditors enter agreement with Minister	Review was completed in 2000. It recommended extending the Act to cover rabbit meat and retail.	A Bill incorporating amendments based on the review recommendations will be introduced in the second half of 2003.	Review and reform incomplete

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Public Health Act 1962*	Provision for food safety offences; requirement that food meet prescribed food standards; registration of premises and vehicles; licensing of food manufacturers and sellers	National review was completed in 2000 (see New South Wales *Food Act 1989*).	Act was replaced by *Food Act 1998.* All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. A new Food Act 2003, based on the model food Bill will replace the Food Act 1998.	Review and reform incomplete
	Dairy Industry Act 1994	Licensing of farmers, processors, manufacturers and vendors	Review by a joint government–industry panel was completed in 1999. It recommended that the Tasmanian Dairy Industry Authority continue to maintain milk quality standards until such time as a national system for food safety is implemented.		Meets CPA obligations (June 2003)
	Meat Hygiene Act 1985	Licensing of meat processing facilities	Review was completed.	Amendments were introduced in 2001. They provide for a simplified licensing system, among other reforms.	Meets CPA obligations (June 2003)

(*continued*)

Table 1.19 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Food Act 1992*	Provision for food safety offences; licensing of food businesses; requirement that food meet prescribed food standards	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. The ACT amended its Act accordingly in August 2001.	Meets CPA obligations (June 2003)
	Meat Act 1931	Requirement for Ministerial permission for certain meat processing activities		Act was repealed by the *Food Act 2001*, subject to the passage of uniform food legislation.	Meets CPA obligations (June 2002)
Northern Territory	*Food Act 1986*	Provision for food safety offences	National review was completed in 2000 (see New South Wales *Food Act 1989*).	All Australian governments agreed in November 2000 to adopt the core provisions of the model food Bill by November 2001. The Northern territory intends to amend its Act accordingly in 2003.	Review and reform incomplete
	Meat Industries Act 1996	Provision for various food safety offences; licensing of processing facilities	Review by an independent reviewer was completed in November 2000. It recommended no change. The Government accepted the recommendation in April 2001.		Meets CPA obligations (June 2002)

Quarantine and food exports

Quarantine

The Australian Quarantine Inspection Service informed the Council that in 2002-02 it supervised about 11 400 ship arrivals; processed nine million passengers and aircrew, about one million cargo containers, 4.1 million airfreight consignments and more than 180 million mail articles; and managed the discharge of more than 200 million tonnes of ballast water.

Legislative restrictions on competition

The Commonwealth Government administers Australia's quarantine arrangements under the *Quarantine Act 1908*. The Act prohibits the import of certain goods, animals and plants unless with a permit. Other imports may require inspection or treatment before being allowed into the country. The entry of goods and passengers to Australia is also subject to screening by quarantine officers (appointed under the Act) who are empowered to search, seize and treat goods suspected of being a quarantine risk.

Regulating in the public interest

Exotic pests and diseases pose a serious threat to the Australian population, fauna and flora, and agriculture. Controlling this threat is a public good — given that it generally is neither feasible nor optimal to exclude people who benefit from quarantine controls — so governments must intervene to supply the level of quarantine control desired by the community. Quarantine controls do, however, impose costs on international trade and travel, which are activities of considerable benefit to the public. To meet the public interest, governments should use the least costly quarantine controls available, and then only to the extent that the benefit of reduced pest and disease threat outweighs the cost.

Review and reform activity

The Quarantine Act was already under review when it was placed on the Commonwealth's NCP legislation review schedule in 1996, but that review (the Nairn Review) did not specifically consider whether the Act restricts competition. Consequently, the Commonwealth Government agreed in 1998 to review any elements of the Act that the Nairn Review had not considered and that restrict competition.

In 1997-98, the Department of Health and Aged Care led an NCP review of those parts of the Act relating to human quarantine. This review concluded

that these provisions have minimal impact on competition and that the public health benefits outweigh this impact. It also found, however, scope to update the legislation to reflect current policy and practice. The Government released a final report in December 2000 following further research and consultation on possible changes. This report recommended a two-stage response to the review:

- stage 1: minor and technical amendments to update the legislation, remove current inconsistencies and to better align existing provisions with current policy and practice regarding human quarantine control measures;

- stage 2: a strategic examination of the department's role in quarantine in the context of current and future communicable disease management.

In response to stage 2 recommendations, the department is addressing issues of contemporary disease preparedness, governance and response, including options for administrative review and cost recovery where appropriate.

The Australian Quarantine Inspection Service proposes to commence a comprehensive re-examination of those parts of the Quarantine Act that relate to animal and plant health. Any amendments arising from this review will be subject to analysis via a regulation impact statement. This re-examination of the Act will also review those elements of the Act that were unchanged following the Nairn Review to assess their compliance with the CPA clause 5 obligations.

Assessment

The NCP review of the human quarantine provisions of the Quarantine Act reached an outcome consistent with the evidence before the review. As such, and because the further review and reform activity does not relate to material restrictions on competition, the Council considers that the Commonwealth met its CPA clause 5 obligations relating to these provisions.

In relation to the animal and plant health provisions of the Act the Commonwealth did not completed its review and reform activity. The Council thus assesses the Commonwealth as not having met its CPA obligations in this area.

Food exports

Food exports make an important contribution to Australia's international trade, accounting for A$24.3 billion in 2000-01 (AFFA 2002).

Legislative restrictions on competition

The Commonwealth's *Export Control Act 1982* provides for the inspection and control of exports prescribed by regulation — namely, the export of food and

forest products. (The 'Forestry' section of this chapter discusses review and reform activity relating to restrictions on competition in the export of forest products). The Act controls most food exports — fish, dairy produce, eggs, meat, dried fruits, fresh fruit and vegetables and some processed fruit and vegetables — and it restricts competition in this area by:

- requiring premises to be registered and to meet certain construction standards;
- imposing processing standards; and
- imposing compliance costs and regulatory charges.

These restrictions raise Australian food exporters' costs and may lead to forgone export sales, particularly where the requirements differ from those for domestic sales.

Regulating in the public interest

In exporting food, Australia must meet:

- market access requirements imposed by, or negotiated with, foreign governments, such as:
  - specified food safety standards or certification by a government agency;
  - trade and product descriptions, and volume limitations;
- obligations under various international agreements; and
- a moral obligation not to export dangerous or unhealthy food.

In addition to these obligations, all Australian food exporters may lose access to a market if one exporter causes a food safety incident. While exporters generally have strong incentives to avoid such incidents, the disruption of exports due to an isolated failure could have a significant impact on the performance of the Australian economy (particularly on the rural and food sectors) and individual producers. Regulating food exports is in the public interest, therefore, where Australian exporters would otherwise not maintain access to foreign markets and where least-cost controls are used. Such controls generally allow exporters flexibility in how they meet market requirements (for example, via accredited quality assurance systems).

Review and reform activity

The Commonwealth completed a two-year review of the Act, as it relates to fish, grains, dairy and processed food, in February 2000. The review was led by a largely independent review committee which consulted extensively within and beyond Australia. The review found that the Act is fulfilling its purpose and delivering an overall economic benefit, having facilitated exports

worth A$13 billion in 1998-99. Against this finding, the review recommended improving the administration of the Act by:

- introducing a three-tiered system for administering Australian standards, access standards imposed by overseas governments and market-specific requirements;
- harmonising domestic and export standards, and making them consistent with relevant international standards;
- continuing to have a single Government agency administer the certification of Australia exports;
- making monitoring and inspection arrangements fully contestable; and
- establishing development committees (with industry and Australian Quarantine Inspection Service representation) to determine and implement strategies and priorities for relevant industries.

The Commonwealth Government decided in April 2002 to accept all recommendations, and is consulting with industry on timeframes for implementation of the reforms. While considerable progress has been made, several complex issues are yet to be resolved.

Assessment

Because the Commonwealth Government is still to implement the review recommendations, the Council assesses it as not having met its CPA obligations in this area. Table 1.20 details the Commonwealth's progress in reviewing and reforming quarantine and export control legislation.

Table 1.20: Review and reform of quarantine and export control regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Quarantine Act 1908*	Screening of goods and passengers entering Australia; prohibition of the importation of certain goods, animals and plants unless with a permit	The Department of Health and Aged Care reviewed provisions relating to human quarantine in 1998. Review found a minimal impact on competition, along with public health benefits in excess of costs. The Department of Agriculture, Fisheries and Forestry will review the provisions relating to animal and plant quarantine.		Human quarantine — meets CPA obligations (June 2001) Plant and animal quarantine — review and reform incomplete
	Export Control Act 1982 (food provisions)	Registration of processing premises; provision for inspection of premises and goods; product standards	Review of provisions relating to fish, grains, dairy and processed food was completed in February 2000. It recommended: • introducing a three-tier model for export standards; • harmonising domestic and international standards; • retaining a monopoly on certification of exports; and • making monitoring and inspection contestable.	The Government accepted all recommendations. An implementation timetable is being developed with industry.	Review and reform incomplete

Veterinary services

About 7000 professional veterinarians are practising in Australia (DEST 2002). Some 60 per cent are in private practice, caring for the companion animals of city people, farm animals and racing greyhounds and horses. Others work for governments to control and prevent diseases that could affect animals throughout the country. Some veterinarians are field officers, some work in laboratories with diagnostic or research duties, some are in higher education and others conduct research and development in the chemical and pharmaceutical industries.

Legislative restrictions on competition

All States and Territories regulate veterinarians via specific legislation. This legislation typically restricts competition among veterinarians through:

- registration and education requirements;
- the reservation of title and areas of practice to veterinarians;
- business conduct restrictions, such as controls on advertising and ownership; and
- disciplinary processes.

In addition, legislation relating to drugs and poisons and animal health welfare may also affect veterinary practice. These restrictions constrain entry into the profession and limit innovation by veterinarians, thereby raising the cost of veterinarians' services and limiting choice for consumers, particularly for those in regional and remote areas with a shortage of veterinarians.

Regulating in the public interest

The principal objective of legislation regulating veterinary practice is to protect the public against professional incompetence, recognising that many consumers of veterinary services may have difficulty assessing the capability of veterinarians. Other objectives to which veterinary legislation contributes, but which generally are the subject of more specific legislation, are:

- to limit the threat posed by inadequate diagnosis and treatment of animal diseases to public health and Australia's livestock and livestock product trade; and
- to protect the welfare of animals.

Professional regulation such as that of veterinary services is in the public interest where restrictions directly reduce identified and important harms and are the minimum effective response. In particular, the regulation of veterinary practice in the public interest should:

- ensure professional interests do not dominate regulatory decisions on entry and conduct, by having regulatory bodies with strong community representation;
- restrict entry only on the basis of clear and objective criteria, such as widely recognised and available qualifications and the absence of specific offences;
- reserve areas of practice only in specific terms, so the reservation reduces harms than cannot be addressed in less costly ways, and allow less qualified practitioners to perform less risky areas of practice; and
- not restrict business conduct in ways that are only weakly linked to avoiding harm, such as the reservation of practice ownership to veterinarians and advertising prohibitions beyond those in the TPA.

Review and reform activity

All States and Territories completed the review of their veterinary legislation. The main reforms implemented or foreshadowed were the removal of business conduct restrictions such as the reservation of practice ownership to veterinarians and the advertising prohibitions (to the extent that advertising is restricted beyond general fair trading regulation). Less common was the removal of general reservations of practice (although Victoria's legislation does not reserve practice and the ACT intends to remove its statutory reservation).

New South Wales completed the review of its *Veterinary Surgeons Act 1986* in 1998. The review found that licensing is in the public interest because it ensures that only trained persons are able to undertake surgical and other high risk health care procedures on animals and that consumers are well informed about the competencies of animal health service providers. New South Wales considers its requirements are consistent in this respect with animal welfare and public health obligations imposed by other legislation. The review also concluded that a licensing system is necessary to meet overseas trade certification quality requirements. It recommended loosening restrictions on entry to the profession and ownership of veterinary hospitals, and opening up less serious animal treatment procedures to nonveterinarians.

The New South Wales Cabinet responded to the review, and a draft Bill is being prepared to give effect to the reforms.

Victoria's *Veterinary Practice Act 1998* followed a pre-NCP review of earlier legislation. The Act removed restrictions on ownership of veterinary practices and strengthened nonveterinarian representation on the Registration Board. Registration provisions were retained, as was reservation of title. The Act does not contain a general reservation of practice, but specific reservations occur in other legislation. Advertising restrictions are equivalent to those in the TPA.

Queensland completed the review of its *Veterinary Surgeons Act 1936* in 2000 and passed amendments in 2001. The amendments removed restrictions on ownership and advertising but retained registration provisions, the reservation of title, a general reservation of practice (subject to the exclusion of not-for-fee practice and certain minor acts), and a provision requiring board approval of premises.

The Western Australian Government endorsed a review of its *Veterinary Surgeons Act 1960* in December 2001. The major review recommendations included:

- introducing a competency based licensing category known as 'veterinary service provider' to reduce the extent of barriers to entry for nonveterinarians wishing to provide veterinary services. Under these new arrangements, a person will be able to perform certain acts of veterinary surgery if that person has passed a relevant course offered by a training organisation;

- repealing the advertising provisions and replacing them with voluntary guidelines or a code of conduct;

- repealing the restrictive aspects of the premises registration provisions, and replacing them with a voluntary code of practice. The Act currently prescribes minimum standards to which veterinary premises must be built and maintained. The review found that these standards create barriers to entry via the higher compliance costs incurred by those wishing to establish a veterinary practice. Further, the review considered that the Act specifies overly restrictive criteria for the registration of premises, to the extent of discouraging innovative means of delivering veterinary services (such as mobile clinics) and limiting the provision of services in rural areas (where innovation is necessary); and

- repealing the restrictions on ownership of veterinary practices by nonveterinarians.

The recommendations, along with other changes that are not NCP related, will be implemented through a specific amendment Bill.

South Australia's review of its *Veterinary Surgeons Act 1985* was completed in May 2000 and approved by Cabinet in September 2000 A Veterinary Practices Bill is before Parliament and expected to be passed in the first half of 2003. Subordinate legislation is to be developed in consultation with the

key industry and public stakeholders. Proclamation of the new Act, and the repeal of the existing Act, are planned for before 31 December 2003.

Tasmania completed a minor review of its *Veterinary Surgeons Act 1987* in February 2000. The review recommended that the Veterinary Board of Tasmania continue to approve educational qualifications and training courses, and regulate practice. The Government retained mandatory registration for veterinary surgeons and specialists, and a requirement to keep records. It removed, however, a number of restrictions on bodies corporate providing veterinary services, via the *Veterinary Surgeons Amendment Act 2002* that came into effect on 1 September 2002.

The review of the ACT *Veterinary Surgeons Registration Act 1965* took place in conjunction with the review of the Territory's health professional legislation because the Health Minister has responsibility for the Act's operation. The Government prepared a draft Bill that would require veterinary surgeons to be registered. The Bill would also:

- retain restricted entry provisions based on the public benefit derived from their contribution to public and animal safety, enhanced productivity and reduced costs from misadventure. The importance of the entry standards to national mutual recognition procedures, taxation arrangements and other public and animal protection legislation were also reasons for retaining the restrictions;

- revise existing professional standards to, increase their specificity and include community evaluation and independent assessment of any breach;

- repeal and replace existing prohibitions against advertising. It recommends, however, enforcing a generic conduct standard breach whereby a registered veterinary professional must not advertise a service in a way that is misleading;

- retain board administration of the legislation. Boards would, however, be required to include community membership and consult with the community on conduct standards. Inquiries conducted by the boards would also require community member participation. The boards would also be responsible to the relevant Minister for their performance. An independent tribunal would replace board hearings on matters involving the potential suspension or cancellation of registration.

Finalisation of a draft revised Bill is awaiting comment on the health professionals bill. Once the structural elements of the health Bill are confirmed, a revised Veterinary Surgeons Bill will be issued for consultation.

The Northern Territory completed the review of its *Veterinarians Act* in 2000. The review recommended:

- retaining licensing, the reservation of title and the reservation of practices;

- increasing the number of nonveterinarian representatives on the Veterinary Board from one to at least two of the board's five members; and

- removing restrictions on the advertising of fees and discounts.

The Northern Territory subsequently advised that

- the legislative approach to restrictions on practice is sufficiently flexible to allow a high reliance on nonveterinarians in outlying pastoral areas to provide related services;

- a legislative proposal will be developed to amend the Act to provide for a Veterinary Board comprised of an independent chair, two elected veterinarians and two appointed consumer representatives; and

- the Regulation restricting advertising was repealed in June 2003

Assessment

The 2002 NCP assessment focused on several aspects of Victoria's and Queensland's legislation following their completion of review and reform in this area. A concern of the Council was the potential domination by veterinarians of registration boards in both jurisdictions.

In its 2003 annual report, Victoria responded to the Council's concerns about the composition of its registration board. It noted that its Veterinary Practices Act introduces significant nonveterinary membership of the registration board: the nine-member board has three members who are not veterinary practitioners. Of the veterinary members, one must be employed by the University of Melbourne (in recognition of the board's role in approving qualifications and accrediting courses of training for registration), and one must be employed by the Crown (in recognition of State veterinarians' role in protecting animal health and welfare, public health, food safety and trade.) Only four of the nine members are registered veterinary practitioners engaged in clinical practice. Victoria considers that clinical practitioner representation ensures the board has sufficient expertise across the many fields of veterinary practice to fulfil its prescribed functions, including setting appropriate standards of veterinary practice and veterinary facilities. Further, Victoria's Act requires that any panel appointed by the board for a hearing into the professional conduct of a veterinary practitioner must include at least one person who is not a veterinary practitioner. The Council considers that these arrangements should ensure the board is not dominated by professional interests. It thus assesses Victoria as having met its CPA obligations in relation to the regulation of veterinary surgeons.

Queensland considers that the composition of its Veterinary Surgeons Board (which contains only one nonveterinarian among its six members) does not restrict competition in terms of imposing meaningful restrictions on entry or business conduct. The board is composed of veterinarians from government,

education and private practice, in addition to consumer representation. In defending professional misconduct action, veterinarians may choose to be heard by the board (which has limited punitive powers not extending to suspension or removal from the register), or by the Veterinary Tribunal (whose decision is appealable to the District Court). Further, the legislation provides for specific entry requirements that preclude the board's arbitrary exclusion of new applicants. In the unlikely event of an arbitrary exclusion, the decision would be subject to judicial review.

The Council was also concerned that Queensland's registration criteria could set a higher than necessary barrier to entry. It was unclear as to how the criterion of 'good fame and character' — would be applied. The Council suggested to Queensland that this question could be addressed by identifying specific character disqualifications (such as prior offences) in the Act, in regulations or in guidelines made available to the public.

Queensland has informed the Council that the absence of specific offences demonstrates the applicant's "good fame and character". For first-time registrants after graduation, two references from course lecturers fulfil the criterion. For applicants registered elsewhere 'good fame and character' is demonstrated by a letter from that registering authority stating that no punitive measures are imposed on the veterinarian. These processes provide the capability to identify specific character disqualifications. This information is conveyed to any person enquiring about registration, and it will be on the board's web site when established.

The reservation of practice to qualified professionals can be in the public interest. In accordance with the principle of minimum necessary regulation, however, the Council previously indicated a preference for specific reservations over the general ones found in the Queensland and the Northern Territory legislation. Specific reservations allow competition from lesser qualified providers except where harmful and where there are no less restrictive means of addressing the harm. Such reservations may be best made in other legislation, such as that controlling animal disease or protecting animal welfare. This is the approach of the Victorian legislation and the intended approach of reforms in the ACT.

Queensland considers that the reservation of practice restriction in its legislation is justified in the public interest. The restriction refers to the prescribed 'acts of veterinary science that require specific veterinary education to perform', — most notably, diagnosis, surgery and the use of scheduled drugs. Queensland considers that it is in the public interest and the interests of animal welfare to restrict the practice of veterinary science to persons who have undertaken appropriate tertiary training and gained professional expertise in the science. Queensland does not restrict nonregistered veterinary surgeons from providing veterinary treatments that are not prescribed as 'acts of veterinary science' and that do not require specific veterinary education to be performed. In support of its position Queensland cited the results of extensive public and industry consultation during the review, which revealed wide community support for maintaining a restriction on who may perform acts of veterinary science. Queensland

accepts the protection of animal welfare as a prime responsibility of Government, and believes the restrictions on veterinary practice reflect community expectations.

Queensland also requires the approval of premises from which veterinarians deliver services. The Victorian and the Northern Territory legislation do not include such a provision. Western Australia intends to replace a similar provision with a code of practice. In 2002, the Council expressed concern that the Queensland provision, which could allow the arbitrary exclusion of new competing premises, is more restrictive than necessary to achieve the legislation's objective.

In response, Queensland referred to community and industry consultation during the review, which supported board approval (as distinct from registration) of veterinary premises to protect the interests of the consumer and to promote animal welfare. Arbitrary exclusion of new premises is not possible because the legislation provides criteria for the approval decision, requires the issue of an information notice if an application is refused, and specifies the right of appeal to the independent Veterinary Tribunal. Any person may apply, the application fees are minimal, and all applications are determined by a demonstration of compliance with uniform minimum standards that are applied equally to all applications. The standards are freely available to any person on request and will be accessible on the proposed board web site.

The Council is satisfied that the restrictions remaining in Queensland's veterinary surgeon legislation are in the public interest and thus assesses Queensland as having met its CPA obligations in this area.

Tasmania completed review and reform of its veterinary surgeon legislation. Although the review recommended the removal of a number of restrictions on business practices, its terms of reference did not require it to consider the composition of the Veterinary Board of Tasmania. The board consists of five members as follows:

- three members who must be registered veterinary surgeons nominated by the Australian Veterinary Association (Tasmanian Division);
- one member who is an officer of the relevant department and a registered veterinary surgeon, and who is nominated by the Secretary of the department; and
- one member who is nominated by the Minister.

The Council considers that the composition of the board may allow the profession to determine important regulatory decisions on entry and conduct. Because Tasmania did not provide a public benefit case to support its veterinary board structure, the Council assesses it as not having met its CPA obligations in this area. The Council notes a subsequent commitment by Tasmania to review the composition of the board.

New South Wales, Western Australia, South Australia, the ACT and the Northern Territory completed reviews but have yet to implement reform of their veterinary practice legislation. The Council thus assesses these jurisdictions as not having met their CPA obligations in this area. However, implementation by the Northern Territory of its review recommendations to increase nonveterinarian representation on the Veterinary Surgeons Board and to allow a nonveterinarian president would satisfy CPA obligations in this area.

Table 1.21 details governments' progress in reviewing and reforming legislation regulating veterinary surgeons.

Table 1.21: Review and reform of veterinary surgery regulation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Veterinary Surgeons Act 1986*	Licensing of veterinary surgeons and hospitals; reservation of practices; reservation of title; advertising restrictions; controls on business names	Review conducted by a panel of officials, comprising veterinarians, consumers and animal welfare interests. The review was completed in 1998.	The Government is developing its intended reforms with public consultation. The Government intends to make amendments in 2003.	Review and reform incomplete
Victoria	*Veterinary Practice Act 1997*	Registration of veterinary practitioners; reservation of title; advertising restrictions	Act followed a pre-NCP review of earlier legislation. Victoria considers remaining restrictions are in the public interest.		Meets CPA obligations (June 2003)
Queensland	*Veterinary Surgeons Act 1936*	Registration of veterinary surgeons; general reservation of practice; advertising restrictions; ownership restrictions; controls on business names	Review was completed in 1999. It recommended: • retaining registration, practice reservation and the approval of premises; and • removing restrictions on ownership, advertising and business names.	Act was amended accordingly in October 2001.	Meets CPA obligations (June 2003)

(*continued*)

Table 1.21 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Western Australia	*Veterinary Surgeons Act 1960*	Licensing of veterinary surgeons and hospitals; general reservation of practice; reservation of title; advertising restrictions; controls on business names	Review was completed in 2001. It recommended: • introducing a new registration for lesser qualified practitioners; but • replacing restrictions on advertising, premises and ownership with voluntary codes. • repealing the restrictive aspects of the premises registration provisions, and replacing them with a voluntary code of practice; and • repealing the restrictions on ownership of veterinary practices by nonveterinarians.	The Government endorsed the review recommendations and intends to amend the Act in 2003.	Review and reform incomplete
South Australia	*Veterinary Surgeons Act 1985*	Licensing of veterinary surgeons and hospitals; reservation of practices; reservation of title; advertising restrictions; controls on business names	Review was completed in 2000.	New legislation is before Parliament.	Review and reform incomplete
Tasmania	*Veterinary Surgeons Act 1987*	Licensing of veterinary surgeons and hospitals; reservation of practices; reservation of title	Minor review was completed in 2000. The review removed some restrictions on business practice but did not consider the composition of the Veterinary Board of Tasmania. Tasmania has undertaken to review this aspect of the Act.	Reforms were implemented by the *Veterinary Surgeons Amendment Act 2002*.	Does not meet CPA obligations (June 2003)

(*continued*)

Table 1.21 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
ACT	*Veterinary Surgeons Registration Act 1965*	Licensing of veterinary surgeons; reservation of practices; reservation of title; advertising restrictions	Review was completed in March 2001. It recommended: • retaining registration, reservation of title and clear conduct standards; and • removing the general reservation of practice.	The Government expects to amend the legislation in 2003.	Review and reform incomplete
Northern Territory	*Veterinarians Act 1994*	Licensing of veterinary surgeons; reservation of practices; reservation of title; advertising restrictions	Review was completed in 2000. It recommended: • retaining licensing, the reservation of title and the reservation of practices; • having additional consumer representation on the Veterinary Board; and • removing some advertising restrictions.	Advertising restrictions were removed in June 2003 and legislation to increase consumer representation on the Veterinary Board is being developed.	Review and reform incomplete

Mining

Coal mining and mining for metallic and non-metallic commodities generated a gross value of A$35.3 billion in 2000-01 (ABARE 2003, p. 32). With few exceptions ownership of minerals is reserved in legislation to the Crown, being the government which has jurisdiction over the territory in which the minerals occur. The mining industry in Australia is privately owned. Governments intervene principally through regulation (some of which is specific to the industry) that restricts competition in mineral and related markets. Governments also assist in matters such as research and the provision of information. Governments' CPA obligations relating to mining, therefore, are to review and, where appropriate, reform this regulation.

Legislative restrictions on competition

Governments prohibit exploration for and extraction of minerals without a right such as a licence or permit. Exploration rights are exclusive, generally nontradeable and defined by area boundaries and period (between 2 and 10 years). Governments usually allocate these on a 'first come, first served' basis, although there are some instances of competitive tenders. These rights often oblige holders to undertake a specified level of exploration work and to reveal the results of this work. Holders wishing to extract minerals must apply for an extraction right (or mining lease or licence).

Extraction rights are also exclusive and generally nontradeable. Their term is 16 – 25 years. The rights require the holder to pay a resource royalty to the government, to pay fair compensation to the landowner, and to minimise environmental harms (a requirement that includes rehabilitation of former mine sites).

Some specific large mining projects are regulated by agreement Acts. These Acts specify in advance the contributions and obligations of the developer and the government, thus, reducing uncertainty for miners and mine investors. As well as allocating ownership of resources, these Acts may cover the provision of transport, water and energy infrastructure. Agreement Acts are most common in Western Australia where there are 64 resource development agreement Acts in operation. Few Agreement Acts in Australia have been listed for NCP review.

Regulating in the public interest

The Industry Commission's 1991 report on mining and minerals processing contains an extensive and authoritative analysis of the regulation of

mining (IC 1991). The commission evaluated the allocation of exploration and extraction rights and recommended either:

- its preferred approach — long-term (99-year) tradeable mineral rights, subject only to limited and well-defined conditions related to royalties and environmental safeguards, allocated by competitive cash bidding; or

- an incremental change approach — existing mineral rights, (but without exploration rights being subject to work program conditions), allocated on the 'first come, first served' basis, or a competitive basis where there is the prospect of significant competition for a right.

Agreement Acts provide long-term and well-defined rights and obligations, so are not inconsistent with the approach advocated by the commission. The issue of most concern for competition is how these rights are allocated. The allocation process tends to be ad hoc, rather than governed by legislation, so public interest issues arising from these agreements are better addressed by means other than the CPA clause 5 obligations. Consequently, the Council does not consider that agreement Acts are a priority for NCP assessment.

Review and reform activity

Commonwealth

The Commonwealth Government commissioned an independent review of the *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations in 1998. This legislation gives traditional Aboriginal owners the right to consent to mineral exploration. The review, released in August 1999, recommended retaining this right and removing other restrictions on consent negotiations. The Government is considering its response to this and other reviews of the legislation. It is continuing to consult stakeholders in an effort to reach agreement on reforms, and it is awaiting responses from the Northern Territory Government and the Northern and Central land councils.

The Commonwealth Government reviewed its *Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993* and Regulations in 1997. This legislation imposes a fee on uranium producers to recover the costs of nuclear safeguards and protection activities related to uranium production. The review, by a committee of officials, recommended replacing the flat per-producer fee with one based on uranium output and the historical costs of these activities. It also recommended removal of the cap on fees paid by individual producers. In December 1997, the Government announced that it accepted all recommendations except the fee cap removal. It implemented the change to the fee via a Regulation.

Assessment

In its 2002 NCP assessment, the Council accepted that the Commonwealth Government has substantively met its CPA clause 5 obligations relating to the Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act and Regulations. The Council acknowledged that retaining the fee cap is unlikely to have a significant effect on competition.

The Council assesses the Government as not having met its CPA obligations relating to the Aboriginal Land Rights (Northern Territory) Act (and Regulations), however, because the Government did not respond to the review.

New South Wales

In its 1997 NCP assessment, the Council assessed New South Wales as having met its CPA obligations in relation to the *Coal Ownership (Restitution) Act 1990* and the *Coal Acquisition Act 1981*. New South Wales progressed the NCP reviews of its *Coal Mines Regulation Act 1982* and *Mines Inspection Act 1901* as part of a general review of mine safety regulation. It developed the *Coal Mine Health and Safety Act 2002* in response to findings concerning mine safety. The Act, passed by Parliament in December 2002, repealed the Coal Mines Regulation Act and complements the *Occupational Health and Safety Act 2000*. The reforms were developed in conjunction with extensive consultation among the Government, the Mine Safety Council and the industry. They considered competition policy principles, including those raised in a 2000 NCP issues paper on the Coal Mines Regulation Act.

The Government released a position paper in October 2002 on reform of legislation governing safety in metalliferous mines and quarries. Reforms proposed in the position paper accounted for competition issues raised in the 2001 NCP review of the Mines Inspection Act. The proposed reforms are similar to those for coal mines, aiming to ensure the particular hazards of metalliferous mine and quarry operation of are appropriately managed at each site. In 2003, the Government plans to introduce a draft Mine Health and Safety Bill (based on the position paper) which would repeal and replace the Mines Inspection Act.

New South Wales reviewed the licensing provisions of the *Mining Act 1992* as part of its licence reduction program. The review found that licensing had benefits and no adverse effects on competition. The Government amended the other provisions of the Mining Act after enacting the Coal Mine Health and Safety Act

Assessment

The Council assesses New South Wales as having met its CPA obligations in relation to the Coal Mines Regulation Act and the Mining Act, but not

meeting its CPA obligations in relation to the Mines Inspection Act, because the State has yet to conclude the reform of this Act.

Victoria

The Council found in its 2001 NCP assessment that Victoria had met its CPA obligations relating to the *Mineral Resources Development Act 1990*. In October 2001, Victoria released the report of an independent review of its *Extractive Industries Development Act 1995*. The review recommended removing the requirement for quarry operators to obtain a work authority from the Minister. Victoria accepted the majority of the review recommendations. Where it did not accept a recommendation (including the recommendation in relation to the work authority), it provided a public interest case for its position. Victoria will introduce draft legislation to implement the Government's response to the review in the Spring 2003 session of Parliament

Assessment

Because Victoria has not implemented reforms arising from the review of the Extractive Industries Development Act, the Council assesses it as not having met its CPA clause 5 obligations in relation to this Act.

Queensland

The Council found in its 1999 NCP assessment that Queensland's repeal of the *Coal Industry (Control) Act 1948* and Orders met the State's CPA obligations. In the 2001 NCP assessment, the Council assessed Queensland as having met its CPA obligations relating to the *Coal Mining Act* 1925 and the *Mineral Resources Act 1989*.

Western Australia

The Council found in its 2001 NCP assessment that Western Australia had met its CPA obligations relating to the *Mining Act 1978* and Regulations 1981.

South Australia

South Australia completed the review of its major mining legislation (namely the *Mining Act 1971,* the *Mines and Works Inspection Act 1920* and the *Opal Mining Act 1995*) in December 2002. The report recommended repealing s.13 of the Opal Mining Act which established the Major Working Area — an area of known opal diggings within the Coober Pedy precious stones field. Under

s.13, corporations are not permitted to enter the Major Working Area for the purposes of prospecting and mining. The review process did not identify any net public benefits from this restriction. South Australia intends to introduce an amending Bill to Parliament in the second half of 2003.

In addition, the review report recommended repealing the health and safety provisions in the Mines and Works Inspection Act because occupational health and safety legislation now deals with these matters. It recommended incorporating the remaining provisions of the Mines and Works Inspection Act in other appropriate legislation (such as the Mining Act).

Assessment

The Council assesses South Australia as not having met its CPA obligations in relation to mining legislation because the Government is still to complete its reform of legislation.

Tasmania

In its 2002 NCP assessment, the Council assessed Tasmania as having met its CPA clause 5 obligations in relation to the *Mineral Resources Development Act 1995*.

The Northern Territory

In its 2001 NCP assessment, the Council found that the Northern Territory had met its CPA clause 5 obligations relating to the *Mine Management Act 1990* and the *Uranium Mining Environmental Control) Act* by repealing the Acts and subjecting the replacement legislation to its gatekeeper process (see chapter 13, volume 2).

The Northern Territory's principal mining legislation is the *Mining Act 1980* which prohibits exploration and extraction activity without a licence or similar authority. The Government completed a review of this Act and announced its response to the review recommendations. Five recommendations require amendments to the Act, four require discussion with the industry before any further action and four require development of the supporting public interest arguments.

Assessment

The Council assesses the Northern Territory as not having met its CPA obligations in relation to the Mining Act because the Government is still to complete its reform of legislation in this area.

Table 1.22 details governments' progress in reviewing and reforming legislation regulating mining.

Table 1.22: Review and reform of legislation regulating mining

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations	Provision for the granting of land to traditional Aboriginal owners; certain rights over granted land, including a veto over mineral exploration.	Review report was released publicly in August 1999.	The Government is considering a response to this and other reviews relating to the Act.	Review and reform incomplete
	Nuclear Safeguards (Producers of Uranium Ore Concentrates) Charge Act 1993 and Regulations	Imposition of a charge on uranium producers to recover cost of nuclear safeguards and protection activities	Review by officials was completed in 1997, recommending principally that the flat fee be replaced with an output-based fee. It also recommended removing the cap on fees paid by individual producers.	The Government announced its response in December 1997, accepting all recommendations but that to remove the fee cap.	Meets CPA obligations (June 2002)
New South Wales	(1) *Coal Ownership (Restitution) Act 1990* and (2) *Coal Acquisition Act 1981*	(1) Provision for the restitution of certain coal acquired by the Crown as a result of the *Coal Acquisition Act 1981*; (2) vesting of all coal in the Crown	Review was unnecessary because the Acts were considered not to restrict competition.	Acts were superseded by the *Coal Acquisition Amendment Act 1997* and are to be repealed when the Coal Compensation Board is abolished.	Meets CPA obligations (June 1997)
	(1) *Mines Inspection Act 1901* and (2) *Coal Mines Regulation Act 1982*	(1) Regulation and inspection of mines, and regulation of the treatment of the products of such mines; (2) regulation of coal mines oil shale mines and kerosene shale mines	Review is under way as part of a general review of mine safety regulation. It is expected to be completed shortly.		Coal Mining Regulation Act — meets CPA obligations (June 2003) Mines Inspection Act — review and reform incomplete

(*continued*)

Table 1.22 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
New South Wales (continued)	*Mining Act 1992*	Licensing of mineral exploration and extraction	Licensing requirements were dealt with under the Licence Reduction Program which found that licensing had benefits and no adverse effects on competition.	The Government amended the other provisions of the Mining Act after enacting the Coal Mine Health and Safety Act	Meets CPA obligations (June 2003)
Victoria	*Extractive Industries Development Act 1995*	Prohibition on searching for quarry stone without a permit; prohibition on quarrying without a work authority from the Minister	Review was completed and released in October 2001. It recommended a number of reforms.	The Government accepted most of the review recommendations and intends to pass amending legislation in 2003.	Review and reform incomplete
	Mineral Resources Development Act 1990	Requirement that licensees must be 'fit and proper' and intend to work; licence conditions, including employment levels; maximum term for licences and restrictions on licence renewal; prohibition on work without an approved work plan; certification of mine managers	Review by independent consultant was completed in 1997, recommending the removal of subjective licence criteria, employment conditions and mine manager certification. The Government accepted most recommendations, at least in part.	Act was amended in 2000. Guidelines were prepared on the interpretation of licence criteria.	Meets CPA obligations (June 2001)

(*continued*)

Table 1.22 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Coal Industry (Control) Act 1948* and Orders	Provision for compulsory acquisition of coal; price regulation; requirement for approval for opening, closing and abandonment of coal mines		Act was repealed.	Meets CPA obligations (June 1999)
	Coal Mining Act 1925	Regulation of the operation of coal mines, particularly health and safety issues	Not listed for review.	Act was repealed and replaced by the *Coal Mining Safety and Health Act 1999* and Regulations which were subject to a gatekeeper review.	Meets CPA obligations (June 2001)
	Mineral Resources Act 1989	Requirement for various permits, licences and leases	Act was not listed for review because not considered unnecessarily restrictive.		Meets CPA obligations (June 2001)
Western Australia	*Mining Act 1978* and Regulations 1981	Prohibition of mineral exploration or extraction without a licence; five-year term for exploration licences and 21 year renewable term for extraction (mining) licences; minimum expenditure conditions	Review by the Department of Minerals and Energy recommended the retention of all restrictions. The Government endorsed the review recommendations in December 2000.	No reform was required.	Meets CPA obligations (June 2001)

(*continued*)

Table 1.22 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Mining Act 1971*	Licensing; five-year exploration licence term and 21-year renewable term for extraction (mining) licences	Review was completed in December 2002.	Amendments are being drafted.	Review and reform incomplete
	Mines and Works Inspection Act 1920	Provision for mine inspector to order the cessation of mining	Review was completed in December 2002.	The Act will be repealed following amendments to the Mining Act.	Review and reform incomplete
	Opal Mining Act 1995	Prohibition on mining for precious stones without authority; sets one-year exploration licence term and 3-month (renewable for 12 months) extraction permit term	Review was completed in December 2002. It did not support the ban on corporate mining in the nominated area of Coober Pedy.	Amendments are being drafted.	Review and reform incomplete
Tasmania	*Mineral Resources Development Act 1995*	Licensing; sets five-year exploration licence term and 21-year renewable term for extraction licences	Review by government/industry panel was completed, recommending no change.	No reform necessary.	Meets CPA obligations (June 2002)
Northern Territory	*Mining Act 1980*	Licensing; six-year exploration licence term (renewable for two plus two years) and a 25-year renewable term for extraction licences	Review was completed.	The Government has announced its response to the review recommendations.	Review and reform incomplete

(*continued*)

Table 1.22 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory (continued)	*Mine Management Act 1990*	Regulation of occupational health and safety in mining	Act was not reviewed.	Act was repealed and replaced by *the Mining Management Act 2001* which was assessed under the gatekeeper process.	Meets CPA obligations (June 2002)
	Uranium Mining (Environmental Control) Act 1979	Control of uranium mining in the Alligator Rivers Region	Act was not reviewed.	See *Mine Management Act 1990*.	Meets CPA obligations (June 2001)