5 Other professions and occupations

This chapter provides the National Competition Council's assessment of States' and Territories' progress against their National Competition Policy (NCP) obligations to review and reform certain professional and occupational regulation — namely, the regulation of motor vehicle dealers, real estate and auctioneer agents, second-hand dealers, travel agents, hairdressers and hawkers. Other chapters in this volume provide the Council's NCP assessment of jurisdictions' progress in reviewing and reforming the regulation covering veterinary surgeons (chapter 1), health professions (chapter 3), the legal profession (chapter 4), teachers (chapter 9) and building-related professions (chapter 10).

Legislative restrictions on competition

Governments' regulation of professions and occupations restricts competition in several ways. Common restrictions include entry requirements (rules or standards governing who may provide services), registration and/or licensing requirements, the reservation of practice (whereby only certified practitioners are allowed to perform certain areas of practice), constraints on ownership and other commercial restrictions.

Licensing requirements vary. Some licensing schemes require complex tests of practitioners' qualifications and character. Others involve a 'negative licensing' approach whereby practitioners are not required to register but must hold prescribed qualifications. In some cases, licensing requirements apply to individual practitioners; in others, they apply to the business rather than the practitioner.

For a number of professions and occupations, the regulating legislation specifies service standards and/or establishes mechanisms for consumer protection. For motor vehicle dealers, legislation typically sets standards for the disclosure of information, minimum warranties and behaviour standards. For real estate agents, legislation sets requirements for fidelity funds, trust accounts and maximum permissible fees. For travel agents, the licensing process aims to ensure service and quality standards, and a compulsory consumer compensation scheme (the Travel Compensation Fund) aims to protect consumers from financial loss if a travel agent defaults. In addition, general consumer protection mechanisms in fair trading laws in each State

and Territory provide avenues for redress of complaints about service provision (see chapter 8, volume 2).

Regulating in the public interest

Most regulation of professions and occupations aims to protect consumers of professional services and the broader community. Market failures, such as information asymmetries and externalities, create an ongoing need to regulate a range of occupations; such regulation, however, can impose costs as well as benefits. The net public benefit is likely to be greatest where regulatory restrictions directly help protect the public and are the least restrictive means available of achieving this objective (Deighton-Smith, Harris and Pearson 2001).

There are some occupations to which every jurisdiction applies a licensing or registration scheme. For other occupations, licensing is a requirement in only some jurisdictions. In this 2003 assessment, as in previous years, the Council paid particular attention to cases of partial licensing because a government's decision not to require licensing or registration of particular occupations raises questions about the public interest case supporting licensing elsewhere.

Review and reform activity

Licensing in all jurisdictions

All jurisdictions license or register commercial agents, inquiry agents, security providers, driving instructors, motor vehicle dealers, pawnbrokers and second-hand dealers, real estate agents and travel agents. In previous assessments, the Council has found that licensing arrangements in some areas comply with NCP requirements. This section addresses outstanding compliance issues.

Commercial agents, inquiry agents and security providers

Jurisdictions generally license and/or register commercial agents (debt collectors), private inquiry agents (private investigators or detectives), various security services providers (such as security guards and other patrol services, crowd controllers, employees of security companies, body guards and workers in the cash transit industry), process servers and private bailiffs. In

the course of their work, these agents may be entrusted with large sums of other people's money, may have to collect confidential information about people and their businesses and may have to use force against people. The aim of a licensing/registration system, therefore, is to protect consumers and clients.

The 2002 NCP assessment found that:

- in relation to legislation regulating commercial agents, Queensland, Tasmania, the ACT and Northern Territory had complied with their Competition Principles Agreement (CPA) obligations;

- in relation to legislation regulating inquiry agents, Western Australia, Tasmania, the ACT and the Northern Territory complied with their CPA obligations; and

- in relation to legislation regulating security providers, New South Wales, Western Australia, Tasmania and the ACT complied with their CPA obligations.

The section considers review and reform activity in jurisdictions that had outstanding compliance matters under the CPA in terms of commercial agent, inquiry agent and security provider legislation after the 2002 NCP assessment. The Council also assesses the ACT's new legislation regulating the security industry introduced after the 2002 NCP assessment.

New South Wales

New South Wales regulates the private investigation and debt collection industry under the *Commercial Agents and Private Inquiry Agents Act 1963*. The government established a working party in late 1997, which recommended replacing the Act with new legislation, adopting a business licensing (rather than an occupational licensing) approach, and removing licensing requirements for repossession agents and process servers.

New South Wales commenced a formal NCP review of the Commercial Agents and Private Inquiry Agents Act in November 2001 and completed the final report in April 2002. The review found that the Act provides a net public benefit by reducing costs to clients and reducing the risk of criminal activity or harm to the public. It found that regulatory objectives may be achieved only through a licensing system. It also recommended removing the following restrictions, which could not be justified in the public interest: the requirement for licensees to be in charge of a business; the distinctions between commercial agent and private inquiry agent licences; and certain compliance requirements for licence holders. The Government anticipates introducing any legislative reforms arising from the NCP review during 2003 (Government of New South Wales 2003).

While the review's recommended approach to regulating commercial agents and private inquiry agents is consistent with the approach taken in other

jurisdictions and appears to be consistent with the CPA clause 5 guiding principle, New South Wales has not yet met its CPA obligations in relation to this legislation as reforms have not been completed.

Victoria

Freehills Regulatory Group completed an NCP review of the *Private Agents Act 1966* in 1999. The review recommended retaining occupational licensing for security providers and making further efforts to develop a national regulatory model for the industry. It recommended replacing licensing requirements for commercial agents with a 'light-handed' registration scheme (combined with greater use of trade practices/fair trading legislation to deal with problem operators) and reforms of the commercial agents surety scheme. The review also recommended reviewing whether the exemptions provided to certain occupational groups are still appropriate.

The Government delayed its response to the NCP review while it conducted a broader policy review of the Act and undertook further consultation (Department of Treasury and Finance 2002). A discussion paper was released in July 2000 and the review has been completed, but the final report has not been publicly released. The Department of Treasury and Finance advised that the Department of Justice intends to seek Cabinet approval to introduce legislative reform in Parliament's autumn 2004 session. Victoria has not met its CPA obligations in this area, however, as it did not complete its review and reform activity.

Queensland

The *Security Providers Act 1992* requires licensing of private investigators, crowd controllers, security guards and security companies. The Office of Fair Trading completed a review of the Act and released the public benefit test report in 2002. The report concluded that licensing of private investigators, crowd controllers, security officers and security companies is necessary to protect consumers and the public, and that the existing entry requirements provide a net benefit to the community and should be retained.

The public benefit test report recommended that the Office of Fair Trading assess some proposals by stakeholders during the review. These proposals include requiring insurance agents and loss adjusters who are not members of the Australasian Institute of Chartered Loss Adjusters to hold private investigator licences, and requiring alarm installers, lock smiths, security consultants and closed-circuit television monitoring staff to hold security officer licences.

The Government endorsed the review recommendations, meaning that it does not need to amend the Act to achieve CPA compliance. The Council considers, therefore, that Queensland has met its CPA obligations in relation to the review and reform of its legislation regulating commercial agents, inquiry agents and security providers. If Queensland introduces new restrictions on

competition, however, it will need to demonstrate that they are in the public interest, as per the CPA's new legislation gatekeeping requirements (see chapter 13, volume 2).

Western Australia

Western Australia advised the NCP review of the *Debt Collectors Licensing Act 1964* has been completed and the recommendations endorsed by Cabinet. The review recommended that the licensing system, trust account provisions, the requirement to lodge a fidelity bond and the upper limit on fees chargeable to debtors by debt collectors be retained in the public interest. It also recommended that licensing be extended to cover employees and that debt collectors be made responsible for licensing their employees. The review found other restrictions not to be in the public interest. It recommended that limits on fees charged to creditors by debt collectors and the requirement for written contracts between creditors and debtors be removed. It also recommended that the age restriction for a licence be reduced from 21 to 18 years of age and the annual licence be replaced with a three year licence, but random inspections of trust accounts be conducted to ensure compliance. Nevertheless, Western Australia has not met its CPA obligations in this area, as it has not implemented the proposed reforms.

South Australia

South Australia's review of its *Security and Investigation Agents Act 1995* was completed in April 2003. It recommended retaining the licensing system but making minor amendments, such as introducing a two-tiered licensing system that distinguishes between contractors and employees. This means that the Government would not need to amend the Act in order to meet its CPA obligations in relation to this matter. As such the Council considers that South Australia has met it CPA obligations in relation to security and investigation agents.

The ACT

Prior to 2003, the ACT security industry was governed by five mandatory codes of practice issued under section 34 of the *Fair Trading Act 1992*. The Department of Justice and Community Safety commissioned an independent review of the codes in 2001. The review found that the codes' registration requirements and conduct standards provide a net benefit to the community. Consequently, the Council found in its 2002 NCP assessment that the ACT had met its CPA obligations in relation to the review and reform of legislation regulating the security industry.

The review also found, however, that the codes of practice were failing to fully support the legislation's objectives, including the objectives of ensuring security providers operate in a safe and ethical manner, and establishing adequate procedures to resolve complaints. Subsequently, the ACT

Government implemented the *Security Industry Act 2003* to replace the security codes of practice. Based on the New South Wales *Security Industry Act 1997*, the Act strengthens entry requirements (by imposing mandatory training and criminal record checks), sets out conduct standards and enhances the compliance systems. Similar provisions in other jurisdictions have also been found to provide a net public benefit. Consequently, the ACT has met its CPA obligations in relation to new legislation for the security industry.

Table 5.1: Review and reform of legislation regulating commercial agents, inquiry agents and security providers

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Commercial Agents and Private Inquiry Agents Act 1963*	Licensing, registration, entry requirements (qualifications, age, experience, character, not convicted of offence), reservation of practice, disciplinary processes, business conduct (requirements that advertising specify agent's name and place of business, maintenance of records, trust account, fidelity bonds)	Commercial agents, private inquiry agents and their subagents	A working party was established in 1997 to look at private inquiry industry legislation in the context of reforms to security industry regulation. It recommended adopting business licensing for commercial agents, rather than occupational licensing, and removing licensing for repossession agents and process servers. A formal NCP review commenced in November 2001 and was completed in April 2002.	The Government anticipates that any legislative reforms arising from the NCP review will be addressed during 2003.	Review and reform incomplete
	Security (Protection) Industry Act 1985	Licensing and regulation	Security providers		Act was repealed and replaced by the *Security Industry Act 1997*.	Meets CPA obligations (June 2001)
	Security Industry Act 1997	Licensing, registration, reservation of practice, entry requirements (qualifications, age, fit and proper person, experience, competency, no conviction of relevant offence), business conduct (advertising must contain licence number), disciplinary processes	Security providers	Act was assessed under new legislation gatekeeper process.		Meets CPA obligations (June 2002)
Victoria	*Private Agents Act 1966*	Licensing, registration, entry requirements (all good character, others vary), reservation of practice, disciplinary processes, business conduct (no misleading or deceptive conduct, financial sureties for commercial agents)	Security guards, crowd controllers, security companies, private inquiry agents, commercial agents, subagents	Freehills Regulatory Group completed the NCP review in October 1999. It supported retaining occupational licensing for security providers, making efforts to develop a national regulatory model for the industry, using 'light-handed' registration for commercial agents instead of licensing; reforming the surety scheme; and considering the establishment of a compensation fund or minimum insurance requirement. Another broader review of the Act has been completed, but not released publicly.	The Department of Justice intends to seek Cabinet approval to introduce legislative reform in the Parliament's Autumn 2004 session.	Review and reform incomplete

(*continued)*

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Auctioneers and Agents Act 1971* (commercial agents)	Licensing, registration, entry requirements (residency, age, character, written exam for auctioneers), reservation of practice, business conduct (suitable premises, trust account receipts, audits, no misleading or deceptive advertising, no unlawful entry)	Commercial agents, managers, commercial subagents	PricewaterhouseCoopers completed a review in 2000. It recommended removing age and residency tests, replacing character tests with suitability assessments, introducing competence assessment, relaxing business premises standards, rationalising the number of licence types and introducing a requirement that agents act for only one party.	The Act was repealed and replaced by the *Property Agents and Motor Dealers Act 2000.*	Meets CPA obligations (June 2001)
	Security Providers Act 1992	Licensing, entry requirements, reservation of practice	Security officers, private investigators, crowd controllers (not in-house security officers)	Minor departmental review was completed in 2002. Public benefit test report concluded that the restrictions are in the public interest and should be retained.	No amendments were required.	Meets CPA obligations (June 2003)
Western Australia	*Debt Collectors Licensing Act 1964*	Licensing, entry requirements (age, fit and proper person), reservation of practice, business conduct (trust accounts, fidelity bonds)	Debt collectors (commercial agents)	Department review completed in 2003. It found many of the restrictions in the licensing system to be in the public interest, but recommended that limits on fees charged to creditors by debt collectors and the requirement for written contracts between creditors and debtors be removed. It also recommended that licensing be extended to cover debt collector's employees.	The Government has endorsed the review recommendations.	Review and reform incomplete
	Inquiry Agents Licensing Act 1954 Securities Agents Act 1976	Licensing	Inquiry and security agents		Acts repealed and replaced by the *Security and Related Activities (Control) Act 1996*.	Meets CPA obligations (June 2001)

(*continued*)

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Security and Related Activities (Control) Act 1996*	Licensing, registration, reservation of practice, entry requirements (training, character, possible medical exam for security officers), business conduct (no advertising unless licensed, operating restrictions), business licensing	Providers of security and inquiry activities	Western Australian Police Service completed a review without consultation. It concluded that the legislation is effective and necessary to ensure high standards, instil public confidence (especially in the area of crowd control) and maintain and improve the industry.	The Government endorsed the review recommendations in 2000.	Meets CPA obligations (June 2001)
South Australia	*Security and Investigation Agents Act 1995*	Barrier to market entry, market conduct	Private inquiry agents, security providers	Review completed January 2003. It supported retention of licensing and other minor changes that do not impact on competition.	No reform required.	Meets CPA obligations (June 2003)
Tasmania	*Commercial and Inquiry Agents Act 1974*	Licensing, entry requirements (suitable person, not convicted of an offence of dishonesty, financial reputation), reservation of practice, disciplinary processes, business conduct (trust accounts, maintain records, audits)	Commercial agents, inquiry agents, security guards, process servers, security agents, commercial sub-agents	Review completed. Report recommended retaining most restrictions, including the option to impose education requirements, but removing process server licensing requirements, making minor changes to entry requirements, and giving the Commissioner for Corporate Affairs, rather than the courts, responsibility for licence approval.	Act repealed and replaced by the *Security and Investigations Agents Act 2002.*	Meets CPA obligations (June 2002)
ACT	*Fair Trading Act 1992*	Code of practice: registration, entry requirements (competency, criminal record check), reservation of practice, disciplinary processes, business licensing (except for debt collectors who are subject to a ban on harassment)	Bodyguards, security guards, cash transit industry, crowd marshals, guard and patrol services, debt collectors	Independent review was completed in 2001. The review found that the restrictions in the code of practice provided significant benefits (by minimising public risk) that outweigh their costs, but recommended considering introducing a licensing model because the code had failed to fully deliver its objectives.	The Government introduced the Security Industry Act 2003 to establish a statutory licensing scheme.	Meets CPA obligations (June 2002 and 2003)

(*continued*)

Table 5.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Occupations*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Commercial and Private Agents Licensing Act*	Licensing, registration, reservation of practice, entry requirements (age, residency, fit and proper person, not found guilty of offence that warrants refusal of licence, no objection by any person to issuing of licence), disciplinary processes, business conduct (bond provision, trust account, prescribed records, requirement for local [but not interstate] licensed agents to have a nominee and branch manager resident in the Territory), business licensing	Commercial agents, process servers, inquiry agents, private bailiffs	Review completed in 1999. It recommended: negative licensing for all types of agent, continuing licensing of employees and subagents; issuing licences for a fixed rather than indefinite period; transferring responsibility for licensing from the courts to the Industries and Business portfolio; reforming business conduct requirements (requirement to issue receipts, a change to trust account arrangements and reconsideration of bonds and indemnity insurance in late 2000); and undertaking a further review to implement best practice licensing processes.	The Government approved the review recommendations and enacted legislation in 2000, which introduced fixed three-year licence terms. Legislation commenced in December 2001.	Meets CPA obligations (June 2001)

Driving instructors

Governments regulate driving instructors to protect consumers and keep learner drivers safe. Generally, driving instructor legislation reserves the practice of teaching learners to drive for fee or reward to registered or accredited instructors. Most jurisdictions require instructors to demonstrate their competency (which may involve attending a training course or passing a test), be of good character and have held a driver's licence for three years before they can register. These requirements potentially restrict entry to the market for driving instruction.

This 2003 assessment considers whether New South Wales, Western Australia and South Australia have met their CPA obligations in relation to legislation regulating driving instructors. The 2002 NCP assessment found that the other States and Territories had met their CPA obligations in this area.

New South Wales

New South Wales completed a review of its driving instructor legislation in September 2001. The review recommended administrative changes to strengthen consumer protection, including creating a formal system within the Road Traffic Authority to conduct character and criminal records checks of licence applicants. The review recommended that the Government:

- remove the requirement for post-licence trainers (such as trainers providing advanced, defensive and recreational driving courses) to hold a driving instructor's licence;
- remove the licensing exemption for Government bodies;
- require the holders of a driving instructor's licence must have comprehensive motor vehicle insurance for the vehicle used for driving instruction;
- remove the requirement for duplicate driving controls;
- require driving schools to report allegations of improper behaviour by driving instructors to the Road Traffic Authority;
- provide for temporary suspension of licences pending investigation of allegations of serious improper behaviour by a driving instructor; and
- replace advertising restrictions with advertising guidelines that incorporate the driving instruction industry code of practice.

The Government supported the majority of the review's recommendations, but undertook a further review of the health and safety implications of some recommendations. The Government subsequently decided not to relax the current provisions for licence tenure because that would result in drivers being able to qualify for instruction without a reasonable level of experience.

It also decided not to remove the requirement for duplicate driving controls because it viewed their absence as an unacceptable safety risk. The Council notes that other jurisdictions, such as Victoria and Tasmania, do not require driving instructors' vehicles to be fitted with dual controls. Such restrictions increase the cost of entering into the market, but they do not raise significant competition concerns. New South Wales implemented the reforms through the *Driving Instructors Amendment Act 2002*, which received assent on 16 December 2002. New South Wales has met its CPA obligations in relation to legislation regulating driving instructors.

Western Australia

Completion of the NCP review of the *Motor Vehicle Driving Instructors Act 1963* has been delayed to allow the peak industry body more time to put in a submission. The Government expects the review to be completed in time for Cabinet to consider the review's final recommendations in September 2003. The Act aims to protect consumers purchasing driving tuition by ensuring they receive proficient tuition from a person of good character, who possesses appropriate skills and knowledge, and who conducts their business dealings fairly and honestly. The Act seeks to achieve this objective by requiring the licensing of anyone who wishes to work as a driving instructor for reward.

The review's preliminary assessment is that, although applicants for licences and licence renewals incur some costs in obtaining and maintaining their licences, these costs are outweighed by the benefits derived from licensing, particularly in view of the young age, inexperience and vulnerability of many of the consumers of driving tuition, and the environment in which driving tuition is necessarily provided.

The review's preliminary conclusion is that retention of the licensing restrictions in the Act is justified in the public interest. While the Government's acceptance of this recommendation would not require legislative reform, Western Australia has not met its CPA obligations in this area because it has not completed the review and reform process.

South Australia

South Australia completed a review of the tow truck operator and driving instructor provisions of the Motor Vehicles Act 1958. The review of driving instructors did not raise any significant competition issues because the restrictions in the Act are substantially equivalent to other jurisdictions' provisions regulating driving instructors, which were found to be in the public interest. The review proposed minor changes to the Act to reflect the terminology used by the industry. The Government is considering the review findings and expects to introduce a Bill to Parliament to implement the review recommendations in 2003. The Council considers that South Australia has met its CPA obligations in relation to legislation regulating driving instructors.

Table 5.2: Review and reform of legislation regulating driving instructors

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	Driving Instructors Act 1992	Licensing, entry requirements (completion of course, aged at least 21 years, possible test, medical exam, character), reservation of practice (teaching for monetary or other reward), business conduct (maintenance of records, possible provisions for displaying identification and advertising)	Final report was completed in September 2001.	The Driving Instructors Amendment Act 2002 removed advertising restrictions and the requirement for post-licence trainers (such as trainers providing advanced, defensive and recreational driving courses) to hold a driving instructor's licence.	Meets CPA obligations (June 2003)
Victoria	Road Safety (Driving Instructors) Act 1998	Licensing, entry requirements (passing of a training course, a fit and proper person, holding of licence for at least three years, criminal and driving record checks), reservation of practice (teaching someone without a licence on a highway for financial gain), business conduct (display photograph and have zero blood alcohol level)	Act was examined under Victoria's new legislation gatekeeping arrangements.		Meets CPA obligations (June 2001)
Queensland	Motor Vehicle Driving Instruction School Act 1969		Act was not for review.	Act repealed and replaced with an accreditation scheme under the Transport Operations (Road Use Management) Act 1995.	Meets CPA obligations (June 2002)
Western Australia	Motor Vehicle Drivers Instructors Act 1963	Licensing, entry requirements (competency, aged at least 21 years, fit and proper person, possible requirement to complete test or course), reservation of practice (teaching for reward), business conduct (use of dual control vehicle, possible provisions for displaying identification)	Completion of the NCP review has been delayed to allow the peak industry body more time to put in a submission. The review's preliminary assessment is that the licensing regime should be retained.		Review and reform incomplete

(continued)

Table 5.2 continued

Jurisdiction	Legislation	Key restrictions	Review activity	Reform activity	Assessment
South Australia	Motor Vehicles Act 1958 (Part 3A) (driving instructors)	Licensing, entry requirements (proficiencies as instructor, fit and proper person, holding licence for at least three years), practice reservation (teaching for reward), business conduct (requirement to display licence)	Review of tow truck operators, motor driving instructors and compulsory third party insurance did not recommend any changes to driving instructor rules that impact on competition.	No competition reforms were required. The Government is considering the review recommendations and expects to implement minor reforms in 2003.	Meets CPA obligations (June 2003)
Tasmania	Traffic Act 1925 (driving instructors)	Licensing, entry requirements (appropriate knowledge and experience [possible test and/or course], aged at least 21 years, good character, suitable person, held a licence for at least three years), practice reservation (teaching for reward), business conduct (dual-control vehicle, unless vehicle is provided by person under instruction)	Act is being progressively reviewed.	Relevant provisions were repealed and replaced by Vehicle and Traffic Act 1999, which retains competency and character restrictions.	Meets CPA obligations (June 2002)
ACT	Road Transport (Driver Licensing) Act 1999 (driving instructors)	Licensing, entry requirements (accreditation: skills, completion of training course, aged at least 21 years, suitable person, medically fit), business conduct (vehicle requirements unless vehicle provided by person under instruction, must display certificate)	Act assessed under new legislation gatekeeper process. It requires accredited instructors to display their accreditation when using a motor vehicle for instruction.		Meets CPA obligations (June 2002)
Northern Territory	Motor Vehicles Act (driving instructors)	Licensing, entry requirements (proficiency as driving instructor [possible test], good character, holding of licence for at least three years), reservation of practice (teaching for reward)	Review completed in 1999. It concluded that the restrictions are justified and provide a net public benefit through helping lower accident and injury rates.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001)

Motor vehicle dealers

The 2002 NCP assessment reported that all jurisdictions had met their CPA obligations in relation to legislation regulating motor vehicle dealers.

Table 5.3 summarises their review and reform activity.

All governments except Tasmania license motor vehicle dealers (or traders). Tasmania's Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996 also impose business conduct requirements on motor vehicle traders.

Motor vehicle dealers are regulated to protect consumers. Consumers may be unable to assess the quality of used cars, may not be familiar with prices and the process of vehicle transfers, and may incur costs to obtain information on price and quality. The review of Queensland's legislation observed that the number of complaints about motor vehicle dealers has risen in recent years and is high relative to the number of complaints in the real estate industry. Complaints tend to relate to mechanical and structural defects in vehicles, false warranties, falsely representing the age of vehicles, misleading advertising and unfair sales techniques (PricewaterhouseCoopers 2000a).

Motor dealer legislation in some States and Territories also aims to reduce the avenues for the disposal of stolen vehicles (Department of Treasury and Finance 2001; Centre for International Economics (CIE) 2000b).

Table 5.3: Review and reform of legislation regulating motor vehicle dealers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Motor Dealers Act 1974*	Licensing (motor dealer, wrecker, wholesaler, motor vehicle parts reconstruction, car market operator, motor vehicle consultant), entry requirements (fit and proper person, sufficient financial resources, dealer qualifications and expertise or experience), reservation of practice, disciplinary processes, business conduct (record-keeping, compensation fund)	Review completed. Act was reviewed in conjunction with review of *Motor Vehicles Repair Act 1980*. Recommendations included: allowing licensees to operate from more than one place of business; and keeping registers of stock and parts only at one place of business where one licensee operates multiple locations.	The Government accepted the review recommendations, making amendments via the *Motor Trades Amendment Act 2001*. The first stage of the Act commenced on 1 March 2002.	Meets CPA obligations (June 2002)
Victoria	*Motor Car Traders Act 1986*	Licensing, registration, entry requirements (aged at least 18 years old, sufficient financial resources, solvency, 'likely to carry on such a business honestly and fairly', and no conviction of serious offence in past 10 years), practice reservation, disciplinary processes, business conduct (statutory warranties, requirement for authority to conduct public auction, maintenance of records, no tampering with odometers, cooling-off period, fees and penalties paid into Motor Car Traders Guarantee Fund for losses from licensed traders not complying with Act, no consignment selling, suitable premises, advertising)	Internal departmental review completed. It recommended: replacing the 'suitable premises' requirement with a requirement to have all relevant planning approvals for any premises at which the trader conducts business, or proposes to carry on business, as a motor car trader; removing the eligibility criterion for a trader conducting a business 'efficiently'; and reducing the potential for unwarranted claims on the Motor Car Traders Guarantee Fund.	Government accepted the review recommendations, making amendments via the *Tribunals and Licensing Authorities (Miscellaneous Amendment) Act 1998*.	Meets CPA obligations (June 2001)

(*continued*)

Table 5.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Auctioneers and Agents Act 1971*	For motor dealers, licensing, registration, entry requirements (dealer and manager: residency, aged at least 21 years, fit and proper person, three of past five years as licensed manager or salesperson [or employee who has that experience], written test), reservation of practice, business conduct (appropriate business premises, maintenance of register, no bogus advertising, no tampering with odometers, maximum commission for sales on consignment)	Review by PricewaterhouseCoopers completed 2000. It recommended: reforms to entry requirements; removing requirement that business premises have enclosed office accommodation and an enclosed display area facing the road; removing maximum commission for sales on consignment; introducing statutory warranties; and introducing a cooling off period for used-car transactions.	Act repealed and replaced by the *Property Agents and Motor Dealers Act 2000.* The new Act implements all of the review recommendations in relation to motor dealers.	Meets CPA obligations for motor dealers (June 2001)
Western Australia	*Motor Vehicle Dealers Act 1973*	Licensing (motor vehicle dealers, yard managers, car market operators, sales persons), entry requirements (dealers: solvency, understanding of obligations under the ACT; yard managers: completion of four-day course), business conduct (statutory warranties on used vehicles), power to the Motor Vehicle Licensing Board to set standards for premises	Review was completed in 1997. It recommended retaining (1) restrictions on licensing for motor vehicle dealers and yard managers, and (2) statutory warranties for used vehicles, but repealing (1) restrictions on licensing for car market operators and salespersons and (2) the power of the Motor Vehicle Licensing Board to set standards for premises.	The Government endorsed the review recommendations. Amending legislation was passed in May 2002.	Meets CPA obligations (June 2002)
South Australia	*Second-Hand Vehicle Dealers Act 1995*	Barrier to market entry, business conduct	Review completed. It recommended a distinction between summary and indictable offences for dishonesty.	Amendments were passed by Parliament in October 2001.	Meets CPA obligations (June 2002)

(*continued*)

Table 5.3 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Fair Trading Act 1990* *Fair Trading (Code of Practice for Motor Vehicle Traders) Regulations 1996*	Mandatory code of practice covering business conduct (written contracts, warranty, complaints system, no deception, no false representation, no misleading advertising)	Minor review completed. It found that the restrictive provisions (those requiring manufacturers to provide warranties for motor vehicles and establishing a system for dealing with customer complaints) are in the public interest.	The Government endorsed the review conclusion.	Meets CPA obligations (June 2001)
ACT	*Sale of Motor Vehicles Act 1977*	Registration and business conduct of motor vehicle dealers	Intradepartmental review was completed in 2001. It found a strong public interest case for retaining the regulatory regime, but recommended amending the Act to remove archaic provisions.	Review recommendations implemented by the Justice and *Community Safety Legislation Amendment Act 2001*.	Meets CPA obligations (June 2002)
Northern Territory	*Consumer Affairs and Fair Trading Act*	Licensing, entry requirements (fit and proper person, sufficient financial and material resources), business conduct (maintenance of records, prescribed forms of contract, submission of annual returns, prohibition on sale of certain vehicles [such as those registered interstate], warranties)	Review completed in 2000. It recommended: removing requirements for licensee to submit annual financial returns; removing requirements for approval of dealer managers; removing power to require banker's guarantee; and formalising the financial test applied for new licences.	*Consumer Affairs and Fair Trading Amendment Act 2002* implements the review recommendations with the exception of the recommendation to remove requirements for approval of dealer managers. The Government considered that the costs of keeping this restriction are low, while the potential costs to consumers from not having a designated responsible person on site could be significant.	Meets CPA obligations (June 2002)

Pawnbrokers and second-hand dealers

Governments are concerned that the businesses of pawnbrokers and second-hand dealers are potential avenues for the disposal of stolen property. The regulation of pawnbrokers aims to reduce the incidence of property-related crime by screening potential operators. It seeks to make this route for disposing of stolen property less attractive, generally by ensuring potential operators are fit and proper persons, requiring sellers of goods to produce identification and provide the police with access to information on the trade of second-hand goods. Regulation also aims to protect consumers by increasing transparency and clarifying consumer rights in dealing with pawnbrokers (Centre for International Economics 2000a).

Governments have similar competition restrictions in their legislation regulating pawnbrokers and second-hand dealers (table 8.4). Most require people in these occupations to obtain a formal licence. South Australia and Tasmania have negative licensing systems (which disqualify people from carrying on a pawnbroker business if, for example, they have been convicted of an offence of dishonesty) and require pawnbrokers to notify (or register with) the police.

The Council's 2002 NCP assessment reported that Victoria, Western Australia, South Australia, Tasmania, the ACT and the Northern Territory had met their CPA obligations for legislation governing pawnbrokers and second-hand dealers. This 2003 NCP assessment considers New South Wales' and Queensland's compliance with their CPA obligations, and provides an update on review and reform activity in Western Australia.

New South Wales

The Department of Fair Trading completed an NCP review of the *Pawnbrokers and Second-hand Dealers Act 1996* in 2001. The review found that regulation of pawnbrokers and second-hand dealers is necessary to address property crime and ensure customers are properly informed of their rights and obligations under a pawn agreement.

The review concluded that the current licensing regime is the regulatory option that best achieves the objectives of the Act and provides the greatest net public benefit. It identified reforms that would enhance the licensing system and reduce the regulatory burden for licensees. These reforms include measures to clarify and update record-keeping and proof-of-identity requirements, and measures to allow pawnbrokers to sell unredeemed goods at either their business premises or auction.

To ensure the Act covers only goods that are at a high risk of being stolen, the review recommended that the Department of Fair Trading continue to monitor the prescribed list of second-hand goods. Further, it recommended that the department continually review the exemptions from the Act to

ensure the Act is not regulating known low risk areas for stolen goods (such as recycling programs conducted on behalf of local governments).

The New South Wales Parliament passed the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*, which implements the reviews recommendations. New South Wales has thus met its CPA obligations in relation to the review and reform of this legislation.

Queensland

The Office of Fair Trading completed the review of the *Pawnbrokers Act 1984* and the *Second-hand Dealers and Collectors Act 1984* in June 2002. It recommended introducing a single licence type to apply to pawnbrokers and second-hand dealers, but repealing the provisions that require collectors to be licensed. It also recommended: introducing a multisite licence to replace the current requirement for a business to have a licence for each separate site; reforming the 'fit and proper person' test; and streamlining business conduct restrictions. The proposal to retain licensing restrictions is consistent with reforms in other jurisdictions and does not raise significant competition issues.

The Government accepted the recommendations of the review, but has delayed implementation of the reforms to allow time to simplify the legislation by consolidating the two Acts. Queensland Treasury advised that the Government expects to introduce the new legislation to Parliament around June 2003. Queensland has not met it CPA obligations in relation to pawnbroker and second-hand dealer legislation, therefore, because it did not complete its reform activity.

Western Australia

The Government recently endorsed the recommendations of the *Pawnbrokers and Second-hand Dealers Act 1994* and prepared the Pawnbrokers and Second-hand Dealers Amendment Bill 2003. The review recommended placing general licence conditions (those intended to apply to all licensees) in the Regulations rather than on individual licences, as a way of improving consistency. It also recommended amendments designed to further the public interest by providing law enforcement agencies with stronger powers to police licensees' adherence to the legislation. These amendments make illegal the repurchasing of goods by pawn brokers, increase fines for serious breaches of licence conditions, require separate business premises to be licensed separately, and require dealers to display their licence number (for example, in newspaper advertisements) to the public. While the review concluded that some of the amendments impose restrictions, the Government stated that they are in the public interest because they ensure more effective policing. Nevertheless, Western Australia has not complied with its CPA obligations in this area as it did not complete the review and reform activity.

Table 5.4: Review and reform of legislation governing pawnbrokers and second-hand dealers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Pawnbrokers and Second-hand Dealers Act 1996*	Licensing (pawnbrokers, second-hand dealers for prescribed goods), registration, entry requirements (age, no mental incapacities, no undischarged bankruptcy, no conviction of dishonesty offence in past 10 years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, public auction of unredeemed goods over A$50, minimum redemption period, operation from fixed premises; second-hand dealers: prescribed records, computer records, prescribed minimum period for holding goods, requirements that seller provide identification, cooperation with police)	Review was completed in 2001 and released for public consultation in May 2002. Recommendations included updating the list of prescribed goods covered by the Act, requiring licensees to be 'fit and proper', clarifying record-keeping requirements and specifying the information that licensees must provide to pawners. It also recommended that the Department of Fair Trading continue to monitor the prescribed goods list (to ensure it covers high risk goods) as well as exemptions (to ensure it does not cover low risk goods).	Recommendations implemented by the *Pawnbrokers and Second-hand Dealers Amendment Act 2002*.	Meets CPA obligations (June 2003)
Victoria	*Second-hand Dealers and Pawnbrokers Act 1989*	Licensing (pawnbrokers, second-hand dealers for non-exempt goods), registration, entry requirements (no conviction of disqualifying offence in past five years, solvency), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, auction of unredeemed goods over A$40; second-hand dealers: prescribed records, prescribed minimum period for holding goods, requirement that seller provide identification, interest rates, cooperation with police)	Departmental review (completed 1996) recommended: replacing 'fit and proper' with 'no serious offences'; removing the obligation to retain metals for seven days after acquisition (with some exceptions); removing the requirement to conduct certain transactions at registered business premises or a market (instead requiring registration of habitually used places); and removing interest rate restrictions.	The Government accepted all the review recommendations and made amendments via the *Law and Justice Legislation Amendment Act 1997.*	Meets CPA obligations (June 2001)

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Pawnbrokers Act 1984*	Licensing, entry (aged at least 18 years old, no mental incapacity, fit and proper person, not a collector, no conviction of fraud or dishonesty offence in past five years), practice reservation, disciplinary processes, business conduct (prescribed records, public auction of unredeemed goods over A$40, cooperation with police)	Review of both Acts was completed June 2002. It recommended introducing: a single licence type to apply to dealers and a multisite licence to replace the requirement for a separate licence for each site. It also recommended reforming the 'fit and proper person' test and streamlining business conduct restrictions.	The Government accepted the review recommendations but has delayed implementation to allow time to simplify the legislation by consolidating the two Acts.	Review and reform incomplete
	Second-hand Dealers and Collectors Act 1984	Licensing (second-hand dealers for nonexempt goods), registration, entry (age, no mental incapacity, fit and proper person, no conviction of fraud or dishonesty offence in past five years), practice reservation, disciplinary processes, business conduct (prescribed records, prescribed period for holding goods, requirement that sellers provide identification, cooperation with police)	The Review (see above) made one recommendation specific to second-hand dealers: that is, to repeal provisions requiring collectors to be licensed.	As above	Review and reform incomplete
Western Australia	*Pawnbrokers and Second-hand Dealers Act 1994*	Licensing (pawnbrokers, second-hand dealers for nonexempt goods), registration, entry requirements (good character, adequate management, supervision and control of business operations, no conviction of dishonesty, fraud or stealing offence in past five years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, computer records, notification of pawner of surplus of proceeds of sale; second-hand dealers: prescribed records, prescribed period for holding goods, requirement that seller provide identification, cooperation with police)	First review (by Police Service) complete. It recommended: retaining the current licensing provisions on the understanding that they may be modified following future review; conducting a further review after the current legislation has been in operation for an additional three years; and examining alternative approaches, including those likely to be introduced in other States. Second review undertaken.	The Government endorsed both reviews' recommendations. An amendment bill has been prepared.	Review and reform incomplete

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Second-hand Dealers and Pawnbrokers Act 1996*	Negative licensing (pawnbrokers, second-hand dealers for all goods except cars), registration (notification to police), entry (no conviction of dishonesty offence in past five years, no undischarged bankruptcy/insolvency), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, selling of unredeemed goods; second-hand dealers: prescribed records, prescribed period for holding goods, requirements that seller provide identification [unless sale by phone], cooperation with police)	Review complete. It recommended no reforms.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001)
Tasmania	*Pawnbrokers Act 1857* *Second-hand Dealers Act 1905*	Licensing, business conduct	Act was not for review.	Act repealed in 1996 by *Second-Hand Dealers and Pawnbrokers Act 1994*.	Meets CPA obligations (June 2001)
	Second-Hand Dealers and Pawnbrokers Act 1994	Negative licensing (pawnbrokers, second-hand dealers, registration (notification at nearest police station), entry requirements (fit and proper person, no conviction of offence against the Act or offence of dishonesty), reservation of practice, disciplinary processes, business conduct (pawnbrokers: prescribed records, redemption period of six months, auction of forfeited goods; second-hand dealers: prescribed records, prescribed period for holding goods, requirement that seller provide identification, cooperation with police)	Minor review complete. Review found restrictive provisions were justified in the public benefit.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001)

(*continued*)

Table 5.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Pawnbrokers Act 1902* (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), reservation of practice, business conduct (prescribed records, public auction unredeemed goods over A$10, cooperation with police)	Intradepartmental review completed in 2001. It recommended the restructuring and modernisation of existing regulations.	The Government introduced legislative amendments to implement the recommendations in June 2002.	Meets CPA obligations (June 2002)
	Second-hand Dealers and Collectors Act 1906 (NSW) in application to ACT	Licensing, registration, entry requirements (aged over 18 years, fit and proper person), reservation of practice (dealing in certain second-hand goods), business conduct (prescribed records, prescribed period for holding of goods, cooperation with police)	Department review was completed in 2000. It recommended: updating the definition of second-hand goods; altering business conduct requirements to account for new technology; repealing some business rules; and repealing provisions relating to collectors.	Recommendations were implemented by the *Justice and Community Safety Legislation Amendment Act (No. 2) 2001*.	Meets CPA obligations (June 2001)
Northern Territory	*Pawnbrokers Act*	Licensing		Act was repealed in1998.	Meets CPA obligations (June 2001)
	Consumer Affairs and Fair Trading Act (pawnbrokers and second-hand dealers)	Licensing (pawnbrokers, second-hand dealers for nonexempt exempt goods), registration, entry requirements (minimum age, no undischarged bankruptcy, no conviction of dishonesty offence in past 10 years), practice reservation, disciplinary processes, business conduct (pawnbrokers: prescribed records, sale of unredeemed goods; second-hand dealers: prescribed records, prescribed period for holding goods, requirement that seller provide identification, cooperation with police)	Review completed in 2000. It recommended retaining the provisions with no amendment.	The Government approved the review recommendations in November 2000.	Meets CPA obligations (June 2001)

Real estate agents

Real estate services generally include buying and selling (by auction or private treaty) residential property, commercial property or businesses and managing or renting residential or commercial property. Real estate agents and their employees conduct most sales and letting of residential property in Australia; the Real Estate Institute of Victoria estimates, for example, that around 96 per cent of Victorian home owners use real estate agents to sell their homes (KPMG Consulting 2000).

Real estate services are regulated to protect consumers from problems due to information imbalances between agents and their clients, and from the risk of financial loss caused by agents' criminal or fraudulent conduct ('defalcation'). Consumers, particularly residential homeowners, often lack experience in purchasing real estate services, generally because they are infrequent participants in the real estate market. Residential home transactions are one of the largest investments for many people, so there is potential for significant loss if they receive poor marketing and advice. Financial loss may also arise from the misappropriation of funds (such as deposits on transactions and rent) held in trust. Further, the sale of a property has legal implications.

All States and Territories prohibit a person from providing real estate services for payment on behalf of an owner or purchaser unless they are licensed. In addition to licensing real estate agents, some States and Territories license real estate office managers and agents' representatives (sales consultants). Liquidators and trustee companies are generally exempt from the licensing requirement, as are legal practitioners in some States.

The Council's 2002 NCP assessment reported that New South Wales and South Australia had met their CPA obligations in relation to legislation regulating real estate agents. This 2003 NCP assessment considers the remaining jurisdictions' compliance with their CPA obligations in this area.

Victoria

KPMG Consulting completed the *National Competition Policy Review of Victorian legislation relating to the regulation of estate agents* in 2000. This review of the *Estate Agents Act 1980* was overseen by a steering committee comprised of representatives from Consumer and Business Affairs Victoria, the Department of Premier and Cabinet, and the Department of Treasury and Finance.

- The review found that there is limited information asymmetry between property owners and estate agents in the commercial property sales, business sales and property management markets. It recommended applying a less restrictive form of licensing to these areas — one that

focuses on limiting defalcation rather than regulating the quality of agents' services — by establishing a two-tier licensing system.

- The review concluded that there was a benefit in maintaining regulations that seek to deliver minimum competency standards and quality services for residential property sales, but recommended making the education and experience requirements for residential real estate agents less restrictive. It recommended introducing a competency-based alternative to the ordinary education requirements and, in addition, deeming certain professions (in particular, legal practitioners) to be competent.

- The review recommended retaining regulation to protect against defalcation. It considered that this regulation is important to ensure consumers have recourse to compensation if trust monies are misappropriated. It also recommended, however, investigating the feasibility of giving agents the choice of being covered by the Estate Agents Guarantee Fund or taking out alternative forms of fidelity guarantee protection (such as a prescribed minimum level of professional indemnity insurance).

- The review recommended removing the requirement for half of the directors of corporate real estate agents to be licensed agents, as well as the restriction on agents' representatives holding shares in the corporation for which they work. It found that the objective of these restrictions — to ensure adequate supervision of all agents and agents' representatives employed by a business — could be achieved by the less restrictive option of requiring corporations to have a licensed agent (who meets the education and experience requirements) who supervises all agents' representatives and is responsible and accountable for all real estate transactions.

The Government released the review report in December 2000 and following consultation, introduced the Estate Agents and Sale of Land Acts (Amendment) Bill to Parliament in October 2002. The Bill lapsed when Parliament was prorogued for the State election. It was reintroduced to Parliament in April 2003 and passed without amendment.

The amended Act incorporates the majority of the review recommendations, except the recommendation to apply a less restrictive licensing approach to agents that are not involved in residential real estate sales. The Government presented the following reasons to the Council in support of this decision.

- Training is relevant not only to the objective of ensuring minimum service quality standards, but also the objective of avoiding embezzlement. Training of licensees in trust accounting is vital to equip them to detect embezzlement by subordinates. Trust money is susceptible to theft regardless of the source, although the Government acknowledged that business vendors and commercial property vendors and landlords make few claims on the Estate Agents Guarantee Fund.

- Residential vendors are not alone in being exposed to potentially large losses from broader agent incompetence. While the level of experience and sophistication may be higher among other client groups *on average*, some individuals may be ill-equipped to identify competent agents in the absence of a licensing 'signal' and thus are open to suffer potentially significant losses.

- There is no alternative or practical way of removing licensing from some segments of the market (such as small business/investor commercial transactions), while retaining it for others. Using the dollar value of a transaction, for example, provides only a rough indicator of the parties' sophistication or capacity to shoulder risk, and it would be costly to police a system where different licensing requirements applied above and below a given transaction value.

- A two-tiered licensing system has the potential to create public misunderstanding about its requirements and application while the industry is largely composed of broad-based businesses rather than specialist estate agencies.

- Property management involves dealings with tenants, whose rights need to be understood and respected by the agent despite the lack of direct contractual relationship between them. The Government acknowledged that self-managing landlords are not required to demonstrate any competence before letting out and managing their properties, but considered that mandatory training would place an unreasonable burden on this group because most have other full-time occupations. It noted that an effective minimum standard for third party managers places some competitive pressure on the standards of self-managing landlords.

- Two-tier licensing would create the potential for numerous, trivial complaints to Consumer and Business Affairs Victoria from agents alleging that operators from outside the mainstream industry had dabbled in business reserved for fully licensed estate agents.

The Council does not find the arguments about a two-tiered licensing system creating public misunderstanding or potential for trivial complaints compelling, particularly without any consideration of alternatives or transitional arrangements such as appropriate information, education and disclosure rules.

The Council accepts that residential vendors are not alone in being exposed to potentially large losses from broader agent incompetence. The review found that poorly drafted contracts or poor advice provided to vendors is prevalent even when licensed estate agents are involved. The review observed that vendors in the commercial property sector already engage in behaviour to mitigate the risks of estate agent incompetence — for example, vendors may seek independent advice or hire other professionals to guide them through the sale process. It also noted that existing mandatory training requirements largely focus on work with residential property, and the current licensing system does not oblige an agent to demonstrate specialist knowledge of other

forms of real estate in any depth. KPMG Consulting considered that if licensing were revoked, then voluntary accreditation and company reputation and brand recognition would become important devices for signalling service quality.

In the property management market, the review found that approximately 48 per cent of complaints made to Consumer and Business Affairs Victoria relate to agents' activities in property rental. It did not, however, dispute that licensing could have a positive impact (KPMG Consulting 2000).

To comply with the CPA clause 5 guiding principle, the Victorian Government must demonstrate that licensing reduces the risks of financial losses associated with agent incompetence. This link is yet to be established. Nevertheless, the Council accepts that there may be no easy or practical means of segmenting the business, commercial and property management markets to ensure minimum quality standards for those judged to be most vulnerable to the risks associated with purchases in these markets. It also notes that a single licence type (for all real estate agents) and education and experience requirements are common features of licensing arrangements in all the States and Territories. Most other NCP reviews of real estate legislation did not recommend adopting a less restrictive approach to licensing. The exception was the draft Tasmanian review, which recommended that property managers not be licensed, but instead should be subject to general trust accounting and record management requirements.

Given some divergence in the findings of jurisdictions' legislation reviews, the Council considers that Victoria's public interest arguments fall within a range of outcomes that could reasonably be justified by the available evidence. It thus assesses Victoria as having complied with its CPA obligations in relation to the review and reform of its legislation regulating real estate agents and their employees.

Queensland

PricewaterhouseCoopers completed a review of the *Auctioneers and Agents Act 1971* in 2000. Queensland implemented the majority of the review recommendations when it replaced the Act with the *Property Agents and Motor Dealers Act 2000,* including retaining caps on maximum commissions as a transitional arrangement.

In the 2002 NCP assessment, the Council accepted that there might be a net community benefit in temporarily retaining maximum commissions while educating market participants about their rights and responsibilities. It postponed finalising its assessment of this issue pending Queensland's review of the matter. The review of commissions commenced in April 2002, assisted by a working party of key stakeholders. The Government is now considering the regulatory options. While making progress on this issue, Queensland has not complied with its CPA obligations because it did not complete its review and reform activity.

Western Australia

Western Australia completed its review of the *Real Estate and Business Agents Act 1978*. The review recommended:

- retaining licensing because it is necessary to protect consumers against the risk of significant financial loss should agents or sales representatives engage in dishonest, incompetent or negligent conduct;
- allowing the Real Estate and Business Agents Board to recognise qualifications other than those prescribed;
- legislating explicit criteria to determine whether a person has a conflict of interest and whether they have sufficient material and financial resources;
- removing restrictions on who may audit trust accounts and the requirement for board approval of franchise agreements; and
- requiring only one director or partner to be licensed, regardless of the number of directors or partners in a licensed partnership or body corporate.

The Government endorsed the review recommendations in February 2003 and commenced drafting amendments. The proposed reforms are consistent with the CPA guiding principle and practices in other jurisdictions. Western Australia has not met its NCP obligations in this area, however, because it did not complete its reform activity.

Tasmania

The Department of Justice and Industrial Relations released the draft report of its review of the *Auctioneers and Real Estate Agents Act 1991* for public comment in November 2001. The draft report's preliminary recommendations proposed that:

- real estate agents should be licensed, subject to the achievement of competency-based qualifications and to good character checks (both personal and financial), but that:
  - real estate managers and sales consultants should not be licensed, because the educational qualifications and reputation checks of employees should be a matter for the employing agents; and
  - property managers should not be licensed, but have to comply with general trust accounting and record management requirements;
- legal practitioners should continue to be exempt from the licensing requirement, and accountants should be exempt in relation to the sale of businesses that do not involve the sale of land;

- real estate agents should be allowed to enter multidisciplinary partnerships; and
- the regulatory and disciplinary functions of the Auctioneers and Real Estate Agents Council should be transferred to the Office of Consumer Affairs and Fair Trading.

Tasmania intended to introduce new legislation in the spring 2002 session of Parliament, but was delayed by the State election. The legislation is expected to be introduced in the spring 2003 session. While the proposed reforms are consistent with the CPA guiding principle, Tasmania has not met its NCP obligations in this area, because it did not complete its review and reform activity.

The ACT

The ACT *Agents Act 1968* regulates real estate, stock and station, business, employment and travel agents. The Department of Justice and Community Safety completed an NCP review of the Act in April 2001. At the same time, in response to the significant shortcomings and age of the legislation, the department conducted a general review of the Act.

The NCP review concluded that there are no competition policy issues requiring legislative reform within the real estate, stock and station, and business agents' markets (Government of the ACT 2002). The Government accepted the department's recommendations. In May 2003, the ACT Legislative Assembly passed the *Agents Act 2003*, which on commencement repeals the *Agents Act 1968*. The new Act was subjected to the ACT's gatekeeping arrangements (see chapter 13, volume 2), which found that the Act's registration and licensing requirements help to overcome information asymmetries and ensure probity in the handling of consumers' finances, so are justified on public interest grounds.

The legislation presents no competition issues requiring reform, so the ACT has met its CPA obligations in this area.

The Northern Territory

The Northern Territory *Agents Licensing Act* regulates entry to the occupations of real estate agent, business agent, conveyancing agent and agents' representative; restricts the employment of agents' representatives; and regulates the business conduct of licensed agents. The CIE completed a review of the Agents Licensing Act in October 2000, finding that the main objective of the Act is to protect consumers of real estate, business and conveyancing services from agent misconduct or negligence. The review considered, however, that partial deregulation of the real estate industry could deliver this objective at a lower cost. It recommended retaining the licensing of business principals and the registration of their employees, but removing statutory educational requirements for agents' representatives.

The review also recommended amending the Act to:

- provide objective assessment criteria for establishing whether an applicant is a fit and proper person to hold a licence;
- enable the Agents Licensing Board (in conjunction with industry) to specify the education requirements for licence applicants;
- permit any registered training organisation to receive funding from the agents' fidelity fund to provide realty education;
- remove the requirement for agents to maintain an office in the Northern Territory and remove the requirement to have a licensed agent in charge of each office, where a real estate business has multiple offices in the same town or city;
- remove provisions that, if exercised, would give the Real Estate Institute of the Northern Territory an exclusive authority to arrange professional indemnity insurance for its members;
- remove requirements for agents to abide by the Real Estate Institute of the Northern Territory's rules of practice; and
- provide for the real estate members of the Agents Licensing Board to be drawn from all of the industry and not just the Real Estate Institute of the Northern Territory's nominees.

The Government implemented the majority of the review recommendations through the *Agents Licensing Amendment Act 2002*. It rejected the recommendation to partly deregulate the real estate industry by leaving agents to determine the appropriate educational requirements for their representatives. Given that agents' representatives are the main people in contact with the public and often work offsite and under limited supervision, the Government considers it critical that they have the knowledge to perform competently and ethically for their clients and the public (Toyne 2002).

Requirements for agents' representatives to hold particular qualifications act as a barrier to entry to the occupation. They impose costs on the industry (and potentially on consumers of real estate services) by limiting the flexibility of employers to employ people with alternative areas of expertise (such as law or marketing) as sales representatives. Further, while they provide consumer protection benefits, prescribed educational standards for agents' representative may not be necessary to deliver adequate levels of protection for consumers.

The Northern Territory review argued that 'competitive edge' would provide an incentive for businesses to ensure their representatives maintain high standards. It also noted that requirements for agents to hold professional indemnity and fidelity insurance provide fallback protection for consumers against financial or consequential loss where employer screening fails (CIE 2000b, pp. 61–3). Similarly, the review of Tasmania's real estate agent

legislation found no justification for requiring a sales consultant to be licensed or hold specific qualifications. It considered that it is not unreasonable to expect an employer to take responsibility for employing suitably qualified and honest staff, and providing the necessary training for staff' (Department of Justice and Industrial Relations 2001).

NCP reviews in other jurisdictions, however, argued that there is a public interest case for retaining minimum educational requirements for agents' representatives. The review of South Australia's *Land Agents Act 1994* found that removing education requirements could expose consumers to significant risks, because sales representatives are often involved in risky areas of real estate transactions — including negotiations, marketing, appraisal and the settlement of contracts (Office of Consumer and Business Affairs 1999b). By highlighting concerns that training inadequacies would often not be identified until after a significant problem arose, the South Australian review implicitly argued in favour of entry barriers over reactive mechanisms such as reputation and insurance.

The review of Victoria's real estate agent legislation also recommended retaining education requirements for agents' representatives, given their involvement in risky areas of transactions (KPMG Consulting 2000). Similarly, the Queensland review found that while its legislation relies on agents' supervision of salespeople to protect consumers, the requirement for sales representatives to pass an examination[1] benefits consumers and the industry by ensuring sales representatives are better equipped to avoid delays or complications in contractual and other aspects of real estate transactions (PricewaterhouseCoopers 2000a).

Given the divergent findings of jurisdictions' legislation reviews, the Council considers that the position adopted by the Northern Territory government falls within a range of outcomes that could reasonably be justified by the available evidence. It thus assesses the Northern Territory as having complied with its CPA obligations in relation to the review and reform of its legislation regulating real estate agents and their employees.

[1] Since the review the examination has been replaced by competency-based assessments under the Property Agents and Motor Dealers Act.

Table 5.5: Review and reform of legislation regulating real estate agents

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Property, Stock and Business Agents Act 1941*	Licensing (real estate, stock and station, business and managing agents), registration, entry requirements (qualifications, sufficient experience, fit and proper person), reservation of practice, disciplinary processes, business conduct (auctions, trust accounts)	Review completed. It recommended introducing competency standards, compulsory professional indemnity insurance and annual licence renewal, and replacing the multilicensing system with a single licence.	Parliament passed the *Property, Stock and Business Agents Act 2002* in June 2002. The Act implements the review recommendations, except the review's proposal to adopt a single licensing system.	Meets CPA obligations (June 2002)
Victoria	*Estate Agents Act 1980*	Licensing of real estate agents (their representatives are negatively licensed), registration, entry requirements (agents: licensed in past five years or qualifications and experience, age, fit and proper person [solvency, no conviction for prescribed offence, no disqualification under Act]; agent's representative: similar but no experience and lower level training), practice reservation (includes auctions of real estate or property), disciplinary processes, business conduct (ownership, name of business and address in advertising, no commission sharing, professional conduct, trust accounts, funding of Estate Agents Guarantee Fund from interest on trust accounts to pay for administration and defalcation), business licensing	Review completed in 2000. It recommended: retaining full licensing for residential property sales, but making experience and education requirements less restrictive; applying a less restrictive form of licensing to agents who sell commercial property and business, and agents who manage property; and retaining regulation to protect against defalcation.	The Government released the report for consultation in formulating its response. The Estate Agents and Sale of Land Acts (Amendment) Bill introduced to Parliament in April 2003 was passed without amendment. The amended Act implements the majority of the review recommendations except the recommendation to apply a less restrictive licensing approach to agents who are not involved in residential real estate sales.	Meets CPA obligations (June 2003)

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Auctioneers and Agents Act 1971* *Property Agents and Motor Dealers Act 2000*	Licensing (real estate agents, managers, salespersons), registration, entry requirements (residency, age, fit and proper person, good character, training and/or experience; for agent, one year experience in past five years), practice reservation, disciplinary processes, business conduct (suitable business premises, maximum commission, licence holder at business)	PricewaterhouseCoopers completed review in 2000. It recommended retaining caps on maximum commissions as a transitional arrangement while market participants are educated about their rights (see also table 5.1, p. 5.8).	The Act was repealed and replaced by the *Property Agents and Motor Dealers Act 2000.* An ongoing community education program regarding agents commissions began in 2001. This has been reviewed and the Government is considering the regulatory options.	Review and reform incomplete
Western Australia	*Real Estate and Business Agents Act 1978*	Licensing (agent's licence, sales representative's certificate), registration, entry requirements (aged over 18 years, good character, fit and proper person [including completion of prescribed courses], understanding of duties and obligations under Act; for agent, sufficient material and financial resources), practice reservation, disciplinary processes, business conduct (managers for branch offices, supervision and control, records, trust accounts, audit, code of conduct, advertising, fidelity fund), business licensing	Department review completed. It recommended licensing be retained, the board be allowed to recognise qualifications other than those prescribed; legislation include explicit criteria for determining conflict of interest and for deeming who has sufficient material and financial resources; restrictions on who may audit trust accounts be removed; the requirement for board approval of franchise agreements be removed and only one director/partner need be licensed.	Maximum fees removed in 1998. The Government endorsed the review recommendations in February 2003 and commenced drafting proposed amendments.	Review and reform incomplete

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Land Agents Act 1994*	Licensing of agents, negative licensing of sales representatives, registration, entry requirements (qualifications, no conviction for an offence of dishonesty, no undischarged bankruptcy or suspension/disqualification from practising an occupation, trade or business), reservation of practice, disciplinary processes, business conduct (provisions for maximum fees in regulations [but not used currently], indemnity fund, trust account), business licensing	Review (involving public consultation) complete. It recommended that legal practitioner qualifications be sufficient for registration as a land agent (subject to legal practitioners demonstrating competence in appraisal) and adopting national competency standards for agents and sales representatives (when agreed by the Standing Committee of Attorneys-General).	The Government endorsed the review recommendation, which has been implemented administratively.	Meets CPA obligations (June 2002)
Tasmania	*Auctioneers and Real Estate Agents Act 1991*	Licensing (real estate agents, managers and sales consultants), registration, entry requirements (education, experience, fit and proper person), reservation of practice, disciplinary processes, business conduct	Draft review report (released November 2001) recommended: retaining licensing of real estate agents, but removing this requirement for office managers and sales consultants; granting an exemption for accountants in relation to the sale of businesses not involving the sale of land; and transferring regulatory and disciplinary functions to the Office of Consumer Affairs and Fair Trading.	The Act will be repealed and replaced by new legislation. Reform implementation has been delayed by the State elections. The Government expects to introduce new legislation in spring 2003.	Review and reform incomplete

(*continued*)

Table 5.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Agents Act 1968*	Licensing (real estate agents, travel agents, business agents, stock and station agents), registration, entry requirements, reservation of practice, disciplinary processes, business conduct	Intradepartmental review completed in 2001. It recommended the Act be replaced, but found no competition policy issues requiring reform. The new Act was subjected to the ACT's new legislation gatekeeping arrangements.	The Government accepted the review findings. The *Agents Act 2003* replaces the 1968 Act.	Meets CPA obligations (June 2003)
Northern Territory	*Agent's Licensing Act*	Licensing (real estate agents, agents representatives, conveyancing agents), registration, entry requirements (fit and proper person, age, competency, education or experience), reservation of practice, disciplinary processes, business conduct (trust monies, professional indemnity insurance, fidelity fund, maintenance of an office in the Northern Territory)	Review was completed in 2002. It recommended retaining licensing of real estate agents but partially deregulating agents' representatives. The review also recommended reforms to entry requirements and business conduct restrictions.	The Government rejected the recommendation to partially deregulate agents' representatives but implemented the remaining recommendations through the *Agents Licensing Amendment Act 2002*.	Meets CPA obligations (June 2003)

Travel agents

Travel agents legislation aims to protect consumers from financial loss when a travel agent defaults and ensure a minimum standard of service delivery. The regulation of travel agents involves a licensing process and a compulsory consumer compensation scheme (CIE 2000g). All jurisdictions have similar eligibility requirements for travel agent licences: agents must be 18 years or older, be a fit and proper person, and have the experience and/or qualifications to operate a travel agency (or have a manager with the relevant experience and/or qualifications) (CIE 2000a).

Governments are taking a national approach to reviewing their travel agent legislation (see chapter 14, volume 2). The Ministerial Council on Consumer Affairs commissioned the CIE, overseen by a council working party, to review legislation regulating travel agents. It released the review report for public comment in August 2000. The review recommended removing entry qualifications for travel agents and retaining the requirement for travel agents to hold insurance. It also recommended dropping the compulsory membership of the Travel Compensation Fund in favour of a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund (CIE 2000a). Other recommendations included changing the current licence exemption threshold and removing the Crown exemption.

The Western Australian Department of Consumer and Employment Protection coordinated the preparation of the review response to the working party, in liaison with the CoAG Committee on Regulatory Reform. The working party, which reported to Ministers in August 2002, supported all of the review's recommendations except the two key recommendations.

- The working party did not accept the recommendation that the competitive insurance model be introduced, because it had concerns about continuity of private supply, premium levels, price volatility and the risk minimisation strategies of private insurers. It preferred the review's option to retain the Travel Compensation Fund but reviewed contribution arrangements to establish a risk-based premium structure and make prudential and reporting arrangements more equitable.

- The working party did not support the recommended removal of entry qualifications. Instead, it recommended that qualification requirements in each participating jurisdiction be reviewed and amended to ensure uniformity. It argued that this uniformity would overcome the problems identified in the review report.

The Ministerial Council on Consumer Affairs endorsed the working party's recommendations in November 2002, and the Standing Committee of Officials of Consumer Affairs will oversee implementation of the reforms.

All States and Territories are progressing towards implementing the working party's recommendations. The following jurisdictions have provided some details on implementation of proposed reforms affecting travel agents.

- New South Wales advised that it anticipates it will implement the necessary legislative reforms in late 2003 or early 2004.

- Victoria advised that it is investigating the implications of the review recommendation to repeal the Crown exemption. Legislation to address this and issues relating to prescribed qualifications for managers may be introduced in spring 2003.

- Western Australia advised that Cabinet endorsed the national review on 23 June 2003. It has commenced implementation of the proposed reforms, but all regulatory amendments will need to be agreed at the national level before being tabled in Parliament. Full implementation is scheduled for completion in 2003.

- The Northern Territory advised that it is likely to support dropping compulsory membership of the Travel Compensation Fund in favour of a competitive insurance system, whereby private insurers compete with the Travel Compensation Fund. The matter is awaiting consideration by the Government.

None of the States and Territories has met their CPA obligations in relation to travel agents legislation because they did not complete their review and reform activity.

Table 5.6: Review and reform of legislation regulating travel agents

Jurisdiction	*Legislation*	*Key restrictions*[a]	*Review activity*[b]	*Reform activity*[c]	*Assessment*
New South Wales	*Travel Agents Act 1986*	Licensing, compulsory insurance, business restrictions	See table notes for detail of the national review.	See table notes for details on the response to the national review. New South Wales anticipates that it will implement the reforms in late 2003 or early 2004.	Review and reform incomplete
Victoria	*Travel Agents Act 1986*	Licensing, compulsory insurance, business restrictions	See table notes for detail of the national review.	See table notes for details on the response to the national review.	Review and reform incomplete
Queensland	*Travel Agents Act 1988*	Licensing, compulsory insurance	See table notes for detail of the national review.	See table notes for details on the response to the national review.	Review and reform incomplete
Western Australia	*Travel Agents Act 1985* and Regulations	Licensing, compulsory insurance	See table notes for detail of the national review.	See table notes for details on the response to the national review. Western Australia intends to implement the Ministerial council's recommendations through the next Acts (Amendment and Repeal) Competition Bill.	Review and reform incomplete
South Australia	*Travel Agents Act 1986*	Licensing, compulsory insurance	See table notes for detail of the national review.	See table notes for details on the response to the national review.	Review and reform incomplete
Tasmania	*Travel Agents Act 1987*	Licensing, registration, compulsory insurance, business restrictions	See table notes for detail of the national review.	See table notes for details on the response to the national review.	Review and reform incomplete
ACT	*Agents Act 1968*	Licensing, registration, compulsory insurance, entry requirements, reservation of practice, disciplinary processes, business conduct	See table notes for detail of the national review.	See table notes for details on the response to the national review. The Government considered the review findings, and decided to retain an agents licensing board.	Review and reform incomplete
Northern Territory	*Consumer Affairs and Fair Trading Act*	Licensing, compulsory insurance	See table notes for detail of the national review.	See table notes for details on the response to the national review.	Review and reform incomplete

[a] Travel agents must have compulsory insurance through membership of the Travel Compensation Fund. [b] The national review, released in 2000, recommended removing entry qualifications for travel agents and retaining compulsory insurance, but opening insurance provision to competition. The final review report has been released for further consultation. [c] In November 2002, the Ministerial Council on Consumer Affairs decided to maintain the Travel Compensation Fund monopoly, but consider establishing a risk-based premium structure and making prudential reporting arrangements more equitable. It recommended that each participating jurisdiction review and amend its entry qualifications to ensure uniformity, so as to address problems identified by the review.

Occupation licensing in some jurisdictions

This section discusses the review and reform of legislation regulating professions and occupations that are licensed in some (but not all) jurisdictions, including auctioneers, conveyancers, employment agents, hairdressers and hawkers.

Auctioneers

Victoria, Queensland, Western Australia, Tasmania, the ACT and the Northern Territory have separate legislation for licensing auctioneers (legislation that generally also includes business conduct requirements). Governments' objectives for licensing auctioneers include increasing consumer confidence in the auction system, protecting vendors and purchasers from specific unfair and anticompetitive conduct at auctions, and preventing and tracing the sale of stolen or diseased livestock at auctions (Ministry of Fair Trading 2000; Victoria University Public Sector Research Unit 1999).

The licensing of particular auctioneers and business conduct requirements are also contained in other legislation. In South Australia, for example, auctioneers are not licensed, but the Land Agents Act requires land agents who sell by auction to be registered and the *Land and Business (Sale and Conveyancing) Act 1994* requires auctioneers selling land or a small business by auction to make the vendor's statement available.

The 2002 NCP assessment reported that Victoria, South Australia and the Northern Territory had met their CPA obligations in relation to the review and reform of legislation governing auctioneers. The following section discusses the remaining jurisdictions' progress towards compliance with their CPA obligations in this area.

Queensland

As discussed, PricewaterhouseCoopers completed a review of the Queensland Auctioneers and Agents Act in 2000. The review recommended reforms to the restrictions on market entry and business conduct, including the deregulation of maximum commissions and the removal of the maximum cap on buyers' premium commissions. The review proposed transitional arrangements to support the implementation of these reforms — for example, a public education campaign to make market participants aware of the changes to their rights and responsibilities.

The Queensland Government accepted the review recommendations, including the proposed transitional arrangements. It repealed the Auctioneers and Agents Act and replaced it with the *Property Agents and*

Motor Dealers Amendment Act 2001 and began an ongoing community education campaign. In April 2002, the Government, assisted by a working party of key stakeholders, commenced a new review of the cap on commissions.

In its 2002 assessment, the Council accepted that there may be a net community benefit in temporarily retaining maximum commissions while educating market participants about their rights and responsibilities. Given that Queensland expected to complete a review of restrictions on commissions during 2002, however, the Council indicated it would finalise its assessment of compliance in 2003. The review of commissions has since been completed and the Government is considering the regulatory options. The Council thus assesses Queensland as not having met its CPA obligations in relation to the licensing of auctioneers because it did not complete its review and reform activity.

Western Australia

The Ministry of Fair Trading completed an NCP review of the *Auction Sales Act 1973* in 2001. It recommended retaining the current licensing system while it assessed the licensing against the CPA guiding principle in the context of a broader review of the Act. The Department of Consumer Protection is finalising a general review of the *Auction Sales Act 1973* in line with the recommendations of the NCP review. In its 2003 NCP annual report, Western Australia advised that it expected the general review to be completed and forwarded to the Minister for Consumer and Employment Protection in the latter half of 2003. Depending on the findings of the general review, alternative industry-specific regulation (such as voluntary accreditation or auctioneer registration) may replace the Act's occupational licensing provisions.

Western Australia has not met its CPA obligations in relation to the licensing of auctioneers because it has not completed its review and reform activity.

Tasmania

Tasmania completed a review of the *Auctioneers and Real Estate Agents Act 1991*. The report found that there is no need to license general auctioneers, but that they should be subject to general trust accounting and record management requirements.

The final report, which has not been publicly released, has been provided to the Minister. A legislative response is expected in the spring 2003 session of Parliament.

The ACT

The ACT completed an NCP review of the *Auctioneers Act 1959* in conjunction with the Agents Act 1968 in 2001. The review found that the regulatory costs are minor, but the benefits appear insufficient to justify licensing auctioneers (Stefaniak 2001). In May 2003, the ACT Legislative Assembly passed the Agents Act 2003, which repeals the Auctioneers Act on its commencement. Consequently, the ACT has met its CPA legislation review and reform obligations in relation to the licensing of auctioneers.

Table 5.7: Review and reform of legislation regulating auctioneers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Auction Sales Act 1958*	Licensing, entry requirements (residency, character), reservation of practice (auctioneering goods, including livestock), business conduct (suitable premises, no music, no disorderly conduct, maintenance of register for cattle and sheep skins, no collusion)	Review by Victoria University was completed in November 1999. It recommended discontinuing licensing and introducing a minimal registration scheme for livestock auctioneers (in the interests of livestock disease control).	The Government accepted the recommendation to discontinue licensing, but rejected the registration proposal as unnecessary. Act was replaced by the *Auction Sales (Repeal) Act 2001*, with effect from 1 January 2003.	Meets CPA obligations (June 2002)
Queensland	*Auctioneers and Agents Act 1971*	Auctioneers: licensing, registration, entry requirements (residency in State or within 65-kilometre border, aged at least 21 years, good fame and character, fit and proper person, two years experience [including four auctions] on provisional licence before general licence), reservation of practice, business conduct (suitable business premises, maximum commission)	Review by PricewaterhouseCoopers was completed in 2000. Public consultation involved circulation of issues paper, submissions and consultations. Review recommendations included reducing some requirements for licensing, removing maximum commissions and the maximum cap on buyers' premium commissions, and exempting auctioneers acting as *del credere* agents from trust accounting provisions.	Act was repealed and replaced by the *Property Agents and Motor Dealers Act 2000*. New Act incorporates most of the review recommendations. Restrictions on commissions were retained to allow for a community education campaign before deregulation. The Government is reviewing the commissions.	Review and reform incomplete.
Western Australia	*Auction Sales Act 1973*	Licensing of auctioneers, entry requirements (fit and proper person, two years experience on restricted licence before general licence), reservation of practice, business conduct (maintenance of records in relation to livestock and vendor accounts)	Review completed in 2001. It recommended retaining the licensing system to allow for a full legislative review within the next 12 months, and then repealing the licensing system unless the full review reveals new reasons justifying the system's retention. A general review of the Act is under way and the Department of Consumer Protection expects to complete it in 2003.		Review and reform incomplete

(*continued*)

Table 5.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Land and Business (Sale and Conveyancing) Act 1994* (Auctioneers)	Business conduct (requirement that auctioneers selling land or small business make the vendor's statement available)	Review was completed in 1999. It involved public consultation. It recommended no reform, including no change to the requirement that auctioneers selling land or a small business by auction make the vendors statement available.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001)
Tasmania	*Auctioneers and Real Estate Agents Act 1991*	Auctioneers: licensing, registration, entry requirements (sufficient knowledge, fit and proper person), business conduct (no misrepresentation, no bids by owners or collusion at auctions)	Review completed. Draft review report was released for consultation. It found that there is no need to license general auctioneers, but that they should be subject to general trust accounting and record management requirements.	The Government intends to repeal the Act and replace it with new legislation in the spring 2003 session of Parliament.	Review and reform incomplete
ACT	*Auctioneers Act 1959*	Licensing, entry requirements (age, good character, no pawnbrokers), reservation of practice, business conduct (maintenance of records for at least 12 months)	Intradepartmental review was completed in 2001. It found that while the regulatory costs are minor, the benefits appear insufficient to justify retaining the licensing requirements in the Act. The review recommended the repeal of the Act.	The Government implemented the Agents Act 2003, which repeals the Auctioneers Act on its commencement.	Meets CPA obligations (June 2003)
Northern Territory	*Auctioneer's Act*	Licensing, entry requirements (aged over 18 years, good character, fit and proper person), reservation of practice, business conduct (maintenance of records for at least 12 months, auctions between 8 am and 11 pm)	Intradepartmental review was completed in May 2002. It recommended replacing current licensing system with a negative licensing system through an Industry Code of Practice under the Consumer Affairs and Fair Trading Act. It also recommended that the Government consider imposing some requirements for handling of trust money and trust accounts.	The Government introduced the Auctioneers Act Repeal Bill to the Legislative Assembly in June 2002.	Meets CPA obligations (June 2002)

Conveyancers

This section examines the review and reform of legislation specifically governing conveyancers. Practice restrictions on conveyancing contained in legal practitioner legislation are discussed in chapter 4 (volume 2).

New South Wales, Victoria, Western Australia, South Australia and the Northern Territory have legislation permitting nonlawyers to undertake certain activities traditionally reserved for legal practitioners, including conveyancing. Apart from Victoria, each has separate legislation regulating nonlawyer conveyancers (or settlement agents). The objective of this legislation is to ensure conveyancers are accountable for the safety of monies held in trust and meet certain standards of competence.

The scope of work performed by conveyancers varies across jurisdictions.

- New South Wales permits conveyancers to undertake a broad scope of work, covering commercial, rural and residential real estate as well as personal property. Conveyancers are not restricted to transactions involving land, but are also permitted to transfer goodwill, stock-in-trade and other personal property without a related sale of land (Department of Fair Trading 2000a).

- In Victoria, the *Legal Practice Act 1996* permits nonlawyer conveyancing firms to undertake the nonlegal work associated with conveyancing only, such as obtaining title searches, making enquiries of statutory authorities and attending settlement. These firms are not permitted to prepare any document that creates, varies, transfers or extinguishes an interest in land, or to give legal advice. Generally, they engage solicitors to do this legal work.

- Western Australia allows real estate settlement agents to effect settlements of land transactions (except farming businesses or mining tenements). Business settlement agents may effect settlements of business transactions (except where the business comprises real estate of a mining tenement). Settlement agents are allowed to prepare some legal documents, such as some caveats (Ministry of Fair Trading 1999).

- South Australia limits conveyancing work to preparing conveyancing instruments for fee or reward. Conveyancers are not permitted to provide legal advice on conveyancing transactions generally, such as the preparation of contracts, or on the legal effect of certain transactions.

- Northern Territory conveyancing agents may facilitate the transaction of real property by performing land title searches, preparing and executing sale contracts, arranging settlement, lodging documents and completing powers of attorney, and recently implemented reforms that permit appropriately qualified conveyancers to provide mortgage lease and business sale contract services.

These differences in the licensing requirements make it difficult for licensees in one jurisdiction to obtain a licence in another jurisdiction. The NCP review of the Commonwealth's *Mutual Recognition Act 1992* highlighted the disparities in the roles of conveyancers and the implications for mutual recognition. The review quoted a South Australian Government submission which noted:

> *OCBA [the Office of Consumer and Business Affairs] also expresses concern over the mutual recognition by SA of WA settlement agents and NT conveyancing agents, as these two groups do not draft their own documents and their work does not include commercial property and its components. To date OCBA has not had to refuse any applications received from WA or NT agents, but it is anticipated that this situation could change.* (CoAG 1998, para 5.2.25)

Pro-competitive reforms to conveyancing regulation can provide substantial benefits, including improved market information, a wider choice of service providers and lower prices. Conveyancing fees in New South Wales, for example, fell by 17 per cent between 1994 and 1996, after the abolition of the legal profession's monopoly and the removal of price scheduling and advertising restrictions, leading to an annual saving to consumers of at least A$86 million.

The following section discusses jurisdictions' progress in completing the review and reform of their legislation regulating conveyancers.

New South Wales

The Department of Fair Trading completed a review of the *Conveyancers Licensing Act 1995* in October 2001. The review found that consumers experience risks in their dealings with conveyancers and that these risks justify continued regulation of the conveyancing industry. It recommended retaining the current occupational licensing model as the regulatory option that best meets the objectives of the Act, but proposed a series of reforms to increase the efficiency and effectiveness of the legislation, reduce the regulatory burden for conveyancers and clarify the operation of the Act. These reforms included:

- introducing competency standards and a 'fit and proper person test' as part of licensing requirements;
- introducing mandatory continuing education requirements for all licence holders;
- prescribing conduct rules for conveyancers;
- providing for multidisciplinary partnerships (except partnerships with real estate agents) and the licensing of corporations;

- providing for the Director-General to investigate and act on suspected unlicensed trading; and

- considering changes to the disciplinary scheme after the completion of a review of part 10 of the Legal Profession Act[2].

The Government accepted the majority of the review recommendations, but after considering the proposal to defer modification of the disciplinary scheme, decided that it was more appropriate to undertake any changes as part of the *Conveyancers Act 1991* review (Department of Fair Trading 2002). The Government implemented the review recommendations in the *Conveyancers Licensing Act 2003*, which repealed the Conveyancers Licensing Act 1995. New South Wales has met its NCP obligations with regard to this matter.

Western Australia

The review of the *Settlement Agents Act 1981* found a net public benefit in licensing settlement agents, because the benefits from reducing the risks of financial loss and increasing consumer confidence outweighed the costs of reduced competition. The review recommended, however:

- replacing the requirement for agents to have 'sufficient material and financial resources' with provisions that:

  - prevent people from holding settlement agents licences if they are insolvent or have a recent history of insolvency; and

  - prevent businesses from holding a licence if a partner or director is insolvent or has a recent history of insolvency;

- removing the residency requirement;

- replacing caps on the maximum fees that an agent can charge with a disciplinary offence of receiving or demanding an excessive fee and giving the board the power to order repayment of an excessive fee received; and

- retaining the requirement for agents to hold professional indemnity and fidelity insurance, but permitting licensees to choose their insurer.

The Cabinet endorsed the review recommendations on 6 May 2002, but is yet to implement the reforms (Department of Treasury and Finance 2002). Consequently, Western Australia has not met its CPA obligations in this area as it has not completed its review and reform activity.

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[2] The complaint and disciplinary procedures (set out in part 10 of the legal profession Act) for conveyancers are the same as for solicitors in respect of professional misconduct and unsatisfactory professional conduct.

South Australia

South Australia's *Conveyancers Act 1994* protects consumers by imposing strict controls on entry to the conveyancing profession, mandating professional indemnity insurance, regulating trust accounts and establishing a disciplinary system. The Office of Consumer and Business Affairs completed a review of the Act in December 1999, which found that most restrictions were justified in the public interest, but some were not.

The review panel recommended amending the probity requirement, which excludes a person (or company) convicted of an offence of dishonesty from being registered as a conveyancer. The panel noted that this requirement may exclude people whose offence has little relevance to the work of a conveyancer. The panel therefore recommended that convictions for summary offences of dishonesty result in a 10-year ban, while convictions for more serious offence continue to result in a permanent ban.

The review panel found that the Act's restrictions on the ownership of incorporated conveyancing businesses could not be justified. It noted that the restrictions inhibit the development of multidisciplinary practices, which may offer economies of scale and flexibility of service provision. It recommended replacing the ownership restrictions with provisions that require the proper management and supervision of a registered incorporated conveyancer by a registered conveyancer, and that make it an offence for directors to unduly influence conveyancers in the performance of their duties.

The review also recommended removing the requirement that the sole object of an incorporated conveyancer be carrying on a business as a conveyancer. The review noted that no submission raised any compelling evidence of benefits arising from this restriction, which prevents incorporated conveyancers carrying on business such as mortgage financing but does not apply to natural persons who are conveyancers.

A Bill to remove the ownership restrictions and prohibit undue influence was introduced to Parliament in late 2000, but lapsed with the calling of the election. The current Government is consulting with stakeholders on this issue and intends to introduce a new Bill to Parliament in the second half of 2003. South Australia, therefore, has not met its CPA obligations in this area as it has not completed its review and reform activity. The Council notes, however, that while this is an important area of reform, some delay in its implementation is unlikely to impose a significant cost on the South Australian economy.

The Northern Territory

The Northern Territory Agent's Licensing Act regulates realty agents who provide real estate, business and conveyancing services. The Government commissioned the Centre for International Economics to review the Act in 2000. The review report recommended:

- replacing the years-of-experience requirement with a competency-based approach, and amending the 'fit and proper person' test to signal to applicants the assessment criteria;

- allowing conveyancers who possess the necessary qualifications to provide mortgage lease and business sale contract services, and investigating whether to establish a 'restricted' conveyancing licence to overcome problems if some agents choose not to upgrade their skills;

- removing the requirement to maintain an office in the Northern Territory, but maintaining the requirement for professional indemnity insurance and fidelity fund contributions.

- recomposing the Agents Licensing Board to include licensed conveyancing agents (CIE 2000b).

The Government accepted the review recommendations relating to conveyancers, which it implemented through the Agents Licensing Amendment Act 2002. The Northern Territory has met its CPA obligations in relation to the review and reform of its legislation regulating conveyancers.

Table 5.8: Review and reform of legislation regulating conveyancers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Conveyancers Licensing Act 1995*	Licensing, registration, entry requirements (age, qualifications, training, experience), the reservation of practice (lawyers also being able to provide these services), disciplinary processes, business conduct (record keeping, trust monies, receipts, professional indemnity insurance)	Review completed. Issues paper was released in March 2000. Final report was submitted to the Minister for Fair Trading in October 2001.	The Government implemented the reform in the *Conveyancers Licensing Act 2003*, which repeals the 1995 Act.	Meets CPA obligations (June 2003)
Western Australia	*Settlements Agents Act 1981*	Licensing, entry requirements (qualifications, two years experience, age, good character, fit and proper person, material and financial resources, residency in Western Australia), reservation of practice, business conduct (supervision, trust accounts, maximum fees, professional indemnity insurance, fidelity fund), business licensing	Review found that licensing settlement agents is in the public interest, given the benefits of reduced risk of financial loss and increased consumer confidence. It recommended: replacing entry requirements relating to the financial resources of agents with provisions preventing insolvent persons from holding a licence; removing the residency requirements; replacing the cap on fees with an offence of 'demanding a fee that is excessive'; and giving agents the option of arranging their professional indemnity and fidelity insurance through an insurer of their choice.	Cabinet endorsed the review report.	Review and reform incomplete

(*continued*)

Table 5.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Conveyancers Act 1994*	Licensing, registration, entry requirements (qualifications, no convictions for offences of dishonesty), the reservation of practice, disciplinary processes, business conduct (professional indemnity insurance, trust accounts, ownership), business licensing	Review was completed in 1999. It involved public consultation. Recommendations included: revising entry requirements in relation to fitness and probity; removing ownership restrictions (but introducing a requirement that a director of an incorporated company must not unduly influence a registered conveyancer); and removing the requirement that the sole object of a conveyancing company is carrying on business as a conveyancer.	Amendments to implement recommendations were introduced in Parliament in late 2000 but the Bill lapsed. The current Government is consulting with stakeholders on this issue and intends to introduce a new Bill to Parliament in the second half of 2003.	Review and reform incomplete
	Land and Business (Sale and Conveyancing) Act 1994	Business conduct of agents, conveyancers and vendors of property for sale of land or small business (information provision, cooling-off period, subdivided land, relationship between agent and principal, preparation of conveyancing instruments, representations)	Review completed. Review involved public consultation. It recommended no reform.	The Government endorsed the review recommendation.	Meets CPA obligations (June 2001)
Northern Territory	*Agent's Licensing Act*	Licensing (real estate agents, agent's representatives, conveyancing agents), registration, entry requirements (fit and proper person, aged at least 18 years, education or experience, competency), reservation of practice, business conduct (office in Northern Territory, professional indemnity insurance, fidelity fund, trust monies)	Review was completed in November 2000. It recommended changes to entry requirements, the reservation of practice and business conduct.	The Government implemented the review recommendations through the *Agents Licensing Amendment Act 2002*.	Meets CPA obligations (June 2003)

Employment agents

Employment agents offer services such as finding employment for unemployed persons or those who want to change employment, recruiting staff for an employer, acting as a counsellor and careers adviser, and assisting with résumé and interview preparation (Department of Fair Trading 2000b). Regulation of employment agents is designed to address problems that arise from information asymmetry between service providers and consumers. The potential risks to consumers include misleading advertising, inappropriate charging of fees, deceptive conduct, unskilled career counselling, inappropriate disclosure of confidential information, and business failure (Department of Fair Trading 2000b).

When governments developed their legislative review timetables in 1996, New South Wales, Victoria, Queensland, Western Australia and South Australia had legislation for licensing employment agents (although Victoria's legislation had never been brought into operation). The ACT introduced licensing of employment agents through a private member's Bill in 1999. Employment agents are also subject to State and Territory fair trading Acts, which mirror the consumer protection provisions of the Commonwealth *Trade Practices Act 1974*. These Acts prohibit practices that seek to exploit or misinform the community, such as deceptive conduct, false representation and misleading advertising.

Victoria repealed the *Employment Agents Act 1983* (which had never been brought into operation) in 2000. New South Wales replaced the *Employment Agents Act 1996* agent licensing legislation with specific consumer protection mechanisms inserted into fair trading legislation. Queensland transferred fee-charging restrictions to its industrial relations legislation; its licensing of employment agents will expire in 2004.

New South Wales, Victoria and Queensland have thus met their CPA obligations in relation to the review and reform of legislation regulating employment agents. The following section assesses Western Australia, South Australia and the ACT's compliance with their CPA obligations in this area.

Western Australia

Western Australia advised that it completed a review of the *Employment Agents Act 1976* but is awaiting final comments from key stakeholders before submitting the report to the Minister for Consumer and Employment Protection. The review report is expected to be submitted by 31 August 2003. The Council assesses that Western Australia has therefore not met its CPA obligations in this area as review and reform is incomplete.

South Australia

South Australia completed the review of the *Employment Agents Registration Act 1993* in October 2000. The review recommended current licensing arrangements be removed from the Act. The review concluded that employment agents should be precluded from charging a fee to a jobseeker simply because the employment agent had the jobseeker on their books, or the employment agent is seeking employment on behalf of that person; and that charging a recurring fee to a jobseeker or a fee for engagement of the jobseeker by the employment agent be prohibited. It recommended that the Act require the development of and adherence to an industry specific code of conduct and that appropriate penalties be determined for breaches of the Act (Government of South Australia 2003).

The previous Government did not respond to the review, so the current Minister for Industrial Relations is considering the review recommendations. The Minister has noted Queensland's proposal to include relevant job seeker protection provisions from the employment agents legislation in the Industrial Relations Act and develop an appropriate industry code for the State. This approach appears to avoid the duplication and overlap of continuing to regulate the sector through separate legislation. Consequently, the Minister requested that information and any recommendations concerning the Queensland recommendations be presented to him by the end of May 2003 (Government of South Australia 2003). A report on the Queensland approach has been presented to the Minister for Industrial Relations, but the Minister is yet to make a decision on the Government's preferred approach to regulating employment agents.

The Council assesses that South Australia has not met its CPA obligations in this area as review and reform is incomplete.

The ACT

In the ACT, employment agents are regulated under the Agents Act 1968, which was reviewed in conjunction with a review of the Auctioneers Act 1959 in 2001. The review questioned the imposition of a licensing regime on the employment agents market. It found that the employment agent licensing scheme is essentially a revenue-raising measure to pay for a licensing system that does little to produce significant public benefits or prevent market failure.

Following a further review in June 2002, the fee payable for a licence under s. 54A of the Agents Act 1968 for an employment agent was substantially reduced from A$1023 to A$371 — Attorney-General (Determination of Fees and Charges for 2002/2003) – 2002 (No 1).

The Legislative Assembly passed the Agents Act 2003 in May 2003, which repealed the 1968 Act (including the provisions dealing with employment agents) on its commencement. The new Act removed restrictions about place of work, which agents cited as a significant restriction on their capacity to

operate in the ACT. The regulation impact statement for the 2003 Act concluded that the regulation of agents, including employment agents, would encourage optimal market performance and protect the financial interests of consumers. It found that the costs for employment agents under the new Act's revised fee structure are negligible compared with the significant public benefits that flow from the legislation. In particular, it found that the cost of licensing agents would remain at an appropriate cost recovery level.

The fact that New South Wales, Victoria, Queensland and the Northern Territory do not require licensing of employment agents (or are transitioning to a deregulated environment) casts doubt on the robustness of the ACT's public interest case for retaining the licensing for employment agents. The Council considers, therefore, that the ACT has not met its CPA obligations in this area. It notes, however, that the reduction in licence fees has reduced the costs of the legislative restriction on employment agents.

Table 5.9: Review and reform of legislation regulating employment agents

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Employment Agents Act 1996*	Licensing, entry requirements (age, fit and proper person, suitable premises, no previous cancellation), reservation of practice, business conduct (separate licence for each premises, registered person in charge, no charge to jobseekers, maintenance of records, no misleading advertising)	Review was completed in February 2001. It recommended abolishing the licensing of employment agents. It also recommended repealing the Act and inserting specific consumer protection mechanisms in relation to employment agents in the *Fair Trading Act 1987.*	Review recommendations were implemented through the *Fair Trading Amendment (Employment Placement Services) Act 2002*.	Meets CPA obligations (June 2003)
Victoria	*Employment Agents Act 1983*		Act was not for review.	Act repealed in 2000. It had never operated.	Meets CPA obligations (June 2001)
Queensland	*Private Employment Agencies Act 1983*	Licensing, entry requirements (residency in Queensland, fit and proper person, suitable premises), reservation of practice, business conduct (no charge to jobseekers except performers and models, no misleading advertising, maintenance of records)	Review completed. It recommended that the Act be expired over two years (with simplified licensing scheme used during transition), an advisory committee be established to develop a code of conduct, and fee-charging rules be moved to the *Industrial Relations Act 1999*.	Review recommendations were implemented through the *Private Employment Agencies and Other Acts Amendment Act 2002*.	Meets CPA obligations (June 2002)
Western Australia	*Employment Agents Act 1976*	Licensing, entry requirements (fit and proper person), reservation of practice, business conduct (maintenance of records, scale of fees, no misleading advertising)	Departmental review completed and is expected to be submitted to the Minister by 31 August 2003.		Review and reform incomplete

(*continued*)

Table 5.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Employment Agents Registration Act 1993*	Licensing, entry requirements (fit and proper person, manager must have sufficient knowledge and experience), practice reservation, business conduct (maintenance of records, no misleading advertising)	Review was completed in October 2000. The review recommended the removal of licensing, that controls be placed on fee charging arrangements and that a mandatory industry specific code of conduct be developed.	The Minister is considering the review recommendations in conjunction with a Queensland proposal for reforms.	Review and reform incomplete
ACT	*Agents Act 1968*	Licensing, entry requirements (age, police check, no disqualification from holding a licence, character references, must advertise intention to seek registration), reservation of title, ownership (restricts partnerships, not-for-profit organisations ineligible for licence), business conduct (no charge to job-seekers).	Review was completed in 2001. It questioned the imposition of a licensing regime on the employment agent market.	Licence fee was reduced from A$1023 to A$371 in 2002. The Act was repealed and replaced by the *Agents Act 2003.*	Does not meet CPA obligations (June 2003)

Hairdressers

Hairdressers provide a range of services including cutting, colouring, setting, permanent waving and styling hair. Most State and Territories have occupational health and safety and/or public health legislation regulating hairdressing premises. This legislation is generally aimed at minimising the risk of disease or infection transmission by requiring hairdressing premises to meet hygiene standards.

Some jurisdictions also regulate the occupation of hairdressing. When governments developed their legislative review timetables in 1996, New South Wales, Western Australia, South Australia and Tasmania had legislation requiring hairdressers to be registered or licensed. Tasmania subsequently repealed its *Hairdressers Registration Act 1975,* thus meeting its CPA obligations in relation to hairdressers. This assessment considers whether the remaining jurisdictions have met their CPA obligations in this area.

New South Wales

In 2000, the Department of Industrial Relations commenced a review of part 6 of the *Shops and Industries Act 1962* (formerly known as the *Factories, Shops and Industries Act 1962),* which regulates hairdressers. Provisions of the Act dealing with hairdressers aim to protect consumers of hairdressing services by establishing a licensing scheme which ensures that all hairdressers are appropriately qualified to practise in the trade. The Act also prescribes TAFE to be the sole provider of hairdressing training in New South Wales. The New South Wales Government advised the Council that the review has been finalised and considered by Government. It also advised that legislation will be progressed in the 2003 spring session of Parliament. As New South Wales has not completed its review and reform process it has not complied with its CPA obligations in relation to hairdressers.

Queensland

The main recommendation of Queensland's NCP review of hairdressers was to replace the licensing of premises with the licensing of businesses undertaking higher risk (that is, skin-penetrating) procedures. Licensing of other activities, including hairdressing, will be discontinued.

The Government authorised preparation of the Public Health (Infection Control for Personal Appearances) Bill in June 2000. The Bill will implement the review's recommendations by replacing the licensing of premises with the licensing of businesses undertaking higher risk procedures. Consequently, this will remove licensing requirements for hairdressers. The Government is expected to introduce the Bill to Parliament in 2003 ready for it to commence on 1 July 2004. While the proposed reforms are consistent with the CPA

guiding principle, Queensland has not met CPA obligations in relation to the regulation of hairdressers because it did not complete its review and reform process. The Council also considers that, even when passed, a public interest case for transitional implementation to July 2004 has not been made. That said, the impacts of delays to this reform are not significant.

Western Australia

Western Australia's *Hairdressers Registration Act 1946* applies to hairdressers working in the Perth metropolitan area, in the South West Land Division or within an 8-kilometre radius of the Kalgoorlie general post office only. The aims of Act are to set minimum quality and health and safety standards in the hairdressing industry. To be registered as a hairdresser the person must have satisfied the Hairdressers Registration Board that they are of good character, and have completed an appropriate course of training and passed appropriate examinations. An unregistered person can not take or use the title hairdresser or use any name, title or description implying that such qualifications are held. The Act also places restrictions on the operation of hairdressing businesses and the type of hairdressing duties a registered hairdresser can undertake.

The Legislative Assembly passed a Hairdressers Repeal Bill in 1996. The Bill did not proceed beyond the second reading stage in the Legislative Council, however. Another repeal Bill was introduced into the Legislative Council in 1996 and referred to the Standing Committee on Public Administration. The committee recommended replacing the registration system with a requirement for hairdressers to hold certain qualifications, but again the Bill did not proceed.

A legislation review of the Hairdressers Registration Act was conducted by consultants from Environmental Resources Management Australia guided by a reference group with representatives from the Hairdressers Registration Board, health, occupational health and safety and community interests and the Department of Training and Employment. The review recommended that the hairdressers' registration scheme be retained and the provisions be extended to apply to the whole State. It found that the public interest is best served by requiring that hairdressers are qualified to ensure hygiene and sanitation are maintained, to reduce the risk of physical harm to customers and to provide higher quality services. Registration as a hairdresser requires the completion of an appropriate course of training and the passing of examinations. In addition, the review recommended that the Hairdressers Registration Board be given discretionary power to create different classes of registration.

The Council considers that the review did not meet the requirements of the CPA as the review's recommendations to retain restrictions on competition were not supported by evidence demonstrating that the benefits of the restriction to the community as a whole outweigh the costs. In addition, the review did not adequately consider less restrictive alternatives to the current registration system.

On the issue of enhancing quality, for example, the review found that the number of complaints was small. The review reported that there were 42 complaints related to quality issues made over the period 1998–2000 (Department of Training and Employment 2001, p. 5.8). The review suggested that the level of quality complaints may be higher because consumers do not always report incidents of poor quality and specific claims against hairdressers may be channelled through local courts or the Small Claims Tribunal, for which no data was available. Based on these figures the review suggested that registration requirements have ensured that a higher level of quality is provided in the market. The review, however, did not provide any evidence to demonstrate that the quality of service is of a different standard in parts of Western Australia where registration is required compared with other parts of Western Australia or other jurisdictions where training and/or quality is not regulated. Rather the review relied on anecdotal evidence from the peak industry bodies across the states and territories obtained during consultation. This casts doubt on the review's conclusion that registration, by enhancing quality — the main purpose of the scheme — provides a significant public benefit or, indeed, that there is a benefit from extending registration to cover the whole state.

The review found that the restrictions on the type of hairdressing duties that a hairdresser can undertake once registered restricts access to hairdressing services for consumers, but the review could find no evidence to suggest that the gender-based restriction provided offsetting quality benefits. The review concluded, therefore, that the Hairdressers Registration Board should be given discretionary power to create different classes of registration that permits more flexibility and is more consistent with the objectives of the legislation. In coming to this conclusion, the review did not consider alternative means of developing *minimum quality standards* and did not provide any evidence to demonstrate that the provision of discretionary power to the board would provide a net benefit to the community. Consequently, it is not clear that this recommendation is consistent with the CPA guiding principle.

Moreover, the review did not consider a range of feasible alternative approaches to registration. Negative licensing, for example, is an alternative that is potentially less restrictive and less costly than the current registration system. While negative licensing provides a lower level of consumer protection than traditional registration it may be appropriate where the potential for serious harm is not great. Under such a scheme all hairdressers meeting minimum quality standards would be permitted to practise unless they were placed on a register of persons ineligible to practise (such as for serious occupational health and safety breaches). Negative licensing was not considered by the review.

In February 2003, the Government endorsed the recommendation to retain the hairdressers' registration scheme. Western Australia has not complied with its CPA obligations in relation to the review and reform of hairdresser registration as it has not completed the reform process.

South Australia

South Australia's *Hairdressers Act 1988* regulates entry to the occupation of hairdressing by prescribing the required qualifications. The Office of Consumer and Business Affairs completed a review of the Act in December 1999, finding the entry restrictions to be justified for now, given the health and safety risks, the substandard work risks and the transaction costs facing consumers seeking to enforce their rights — but probably not in the longer term. It recommended reducing the scope of work reserved for hairdressers and further reviewing the Act in three years, with a view to its repeal.

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to legislation regulating hairdressers, because the then Government had endorsed the review recommendations and passed the recommended legislative amendments. To ensure it remains compliant, the current Government should implement the review's recommendation by scheduling a further review soon.

Table 5.10: Review and reform of legislation regulating hairdressers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Shops and Industries Act 1962 (*formerly the *Factories, Shops and Industries Act 1962)*	Licensing, entry requirements (training and exams or otherwise qualified), reservation of practice (hairdressing for fee, gain or reward), disciplinary processes	Review by Department of Industrial Relations commenced in 2000 and completed in 2003.	The New South Wales Government advised that legislation will be progressed in the 2003 Spring session of Parliament.	Review and reform incomplete
Queensland	*Health Act 1937*	Licensing for hairdressing premises and mobile hairdressers, business conduct (premises constructed and maintained to specific standards, standards of practice)	Review was completed in December 1999. It recommended discontinuing the licensing.	The Government endorsed the recommendations and expects to finalise its implementation by 1 July 2004.	Review and reform incomplete
Western Australia	*Hairdressers Registration Act 1946*	Licensing, registration, entry requirements (good character, training and exam), reservation of practice and title, disciplinary processes	Review by independent consultants has been finalised. The review recommended that the hairdressers' registration scheme be retained and the provisions be extended to apply to the whole State and that the Hairdressing Registration Board be given discretionary power to create different classes of registration.	In February 2003, the Government endorsed the recommendation to retain the hairdressers' registration scheme. It has not yet implemented any reforms.	Review and reform incomplete

(continued)

Table 5.10 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*Hairdressers Act 1988*	Negative licensing, entry requirements (qualifications), practice reservation (washing, cutting, colouring, setting, permanent waving or other treatment of a person's hair, or the massaging or other treatment of a person's scalp, for fee or reward)	Review found the entry requirements justified given potential health and safety risks, the risk of substandard work and the potential costs to consumers of enforcing their legal rights. These risks are not significant, so it recommended reducing the scope of work reserved for hairdressers and further reviewing the Act in three years, with a view to its repeal.	The Government endorsed the recommendations. Parliament passed the legislative amendments in March 2001.	Meets CPA obligations (June 2001)
Tasmania	*Hairdressers' Registration Act 1975*	Licensing, registration (hairdresser, master, principal), entry requirements, business conduct (premises licensed and comply with prescribed design, construction, furnishings and equipment requirements)	The Department of Infrastructure, Energy and Resources undertook an assessment of the legislation and recommended repealing the Act.	Parliament passed the *Hairdressers Repeal Bill* in May 2002.	Meets CPA obligations (June 2002)

Hawkers

Hawkers are generally defined as persons who sell, or present as being ready to sell goods carried on their person, on an animal or from a vehicle (Office of Fair Trading 2000; The Allen Consulting Group 2000a). The activities of hawkers are governed by State and Territory fair trading Acts (see chapter 8, volume 2). In addition, when governments developed their legislative review timetables in 1996, New South Wales, Queensland, the ACT and the Northern Territory had legislation requiring hawkers to be licensed. By the time of the NCP 2002 assessment, however, the ACT was the only jurisdiction with specific hawker legislation still in place.

The ACT's *Hawkers Act 1936* establishes a licensing scheme for hawkers. The Department of Urban Services engaged the Allen Consulting Group to review the Act in combination with the *Collections Act 1959*. The review found that the Hawkers Act's objectives are to protect consumers from fraudulent commercial behaviour and ensure business is conducted in a safe and orderly fashion in public places. The review was sceptical about the need for specific consumer protection regulations, but concluded that there is a need to regulate hawking in public spaces. In other jurisdictions, local government regulations minimise the impacts of hawking on public safety and traffic, but the ACT has only a single level of government so must legislate to address these issues (The Allen Consulting Group 2000a).

The review recommended continuing positive licensing for hawkers operating from a single location and adopting negative licensing for mobile hawkers. It proposed removing the character and minimum age requirement for licensees, permitting businesses to hold licences, and removing restrictions on the number of people whom a hawker can employ and the number of vehicles that a mobile hawker can operate. It also recommended replacing the ban on hawking within 180 metres of shops with alternative location controls similar to those used for moveable signs.

The *Hawkers Act 2003*, which repeals the previous Act, will commence in September 2003. It implements the major review recommendations, except the recommendation to replace the exclusion zone with alternative controls. The Government rejected the proposed approach as being more prescriptive and increasing administration costs while achieving largely the same outcome (Government of the ACT 2002). As discussed in the 2002 NCP assessment, the Council accepts that some location restrictions are justified on public safety and traffic management grounds. In principle, the review's proposal offers a more direct (and less restrictive) means of addressing these issues than offered by the arbitrary exclusion zone retained in the Hawkers Act 2003, but given that both approaches appear to result in broadly similar outcomes, the lower administration costs justify retaining the exclusion zone. The Council considers, therefore, that the ACT has met its CPA obligations in relation to the review and reform of its legislation regulating hawkers.

Table 5.11: Review and reform of legislation regulating hawkers

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Hawkers Act 1974*	Licensing, business conduct	Review completed.	Act was repealed.	Meets CPA obligations (June 2001)
Queensland	*Hawkers Act 1984*	Licensing, entry requirements (age, no mental disease, fit and proper), business conduct (no business between 6 pm and 7 am). Act does not apply to certain businesses (for example, charity or sale by maker of goods).	Reduced NCP review undertaken by Office of Fair Trading, was overseen by a review committee comprising representatives of the Office of Fair Trading, Queensland Police, the Department of Communication and Information, the Department of Local Government, Planning and Sport and the Treasury. Review involved targeted consultation with licensed hawkers, local governments and consumer associations.	Act was repealed by the *Tourism and Fair Trading (Miscellaneous Provisions) Act 2002*.	Meets CPA obligations (June 2002)
ACT	*Hawkers Act 1936*	Licensing, entry requirements (age, good character, fit and proper person), business conduct (geographic and time restrictions, business structure)	The Allen Consulting Group reviewed the Act, in conjunction with the *Collections Act 1959*. Review involved targeted public consultation with issues paper, meetings and submissions. It recommended: refocusing legislation on land use and continuing positive licensing for hawkers operating from a single location, but having negative licensing for mobile hawkers; removing restrictions on the number of vehicles a hawker can operate, and the number of people hawkers can employ and their age; removing 180-metre exclusion zone from traditional shops, and regulating health, liquor and contraband goods via other legislation.	Act was repealed and replaced by the *Hawkers Act 2003*, which implemented the major review recommendations except the recommendation to remove the 180-metre exclusion zone.	Meets CPA obligations (June 2003)
Northern Territory	*Hawkers Act*	Licensing, business conduct	Stakeholder-focused review was completed in August 2000. It found licensing requirements, exemption provisions and restrictions on hawking on Crown land were anticompetitive, although necessary to protect the public in terms of proper commercial dealings and annoyance. It was, however, also found that the objectives of the legislation could be pursued through other legislation. The review recommended repealing the legislation, pending consideration of other legislative means for regulating hawking offences.	The Government accepted the recommendations in September 2000. Bill to repeal the Act was passed in November 2000 (and brought into effect in April 2001).	Meets CPA obligations (June 2001)

Other licensed occupations

The Council's 2002 NCP assessment reported that:

- the Commonwealth had met its CPA obligations in relation to the review and reform of its legislation regulating migration agents;
- Victoria had met its CPA new legislation obligations in relation to the *Introduction Agents Act 1997* and its legislation review and reform obligations in relation to the *Professional Boxing and Martial Arts Act 1985* in 2001; and
- Western Australia had met its CPA obligations in relation to the review and reform of the *Boxing Control Act 1987* in 2001.

The following section discusses jurisdictions' review and reform activity since the 2002 NCP assessment.

New South Wales

New South Wales has licensing provisions in its *Boxing and Wrestling Control Act 1986*, *Entertainment Industry Act 1989* and *Wool, Hides and Skins Dealers Act 1935*.

The primary objectives of the Boxing and Wrestling Control Act are to promote safety and ensure integrity. The Act sets fees for registration and the requirements and conditions for events, competitors and industry participants, including compulsory medical checks, requirements for the competent supervision of fights, gender and age restrictions and a 'fit and proper' test (to address corruption issues). The Government considers that there is an inherent and broad public benefit in regulating participation in dangerous combat sports, even where medical opinion is divided. Accordingly, it does not propose to alter the regulatory framework at this time. New South Wales has complied with its CPA obligations in this area.

New South Wales is preparing the final report of the Entertainment Industry Act review. The draft review found no competition issues, but that compliance and enforcement could be improved. New South Wales has complied with its CPA obligations on this matter.

The issues paper for the review of the Wool, Hides and Skins Dealers Act recommended repealing the Act. The final report (completed in June 2002), however, recommended keeping the licensing requirement because it did not impose a significant cost on industry and provided an effective crime deterrent regime with secondary benefits in disease control. The review also recommended narrowing the Act to cover only sheep and cattle, removing the nominal licence fee (A$10) and renewing licences on a three-year (rather than annual) basis. These changes would help to reduce the cost of regulation.

These recommendations are supported by the Pastoral and Agricultural Crime Working Party review, which found that stock stealing continues to be

a major crime in New South Wales and has increased in recent years in response to the rise in the value of cattle and the exhaustion of wool stockpiles. It also found that wool, hides and skins can easily be stolen and on-sold because they lack identifiers. The working party recommended retaining the licensing regime as the most effective means of tracking and investigating trade, but modifying it based on the pawnbroker licensing provisions, given the similar risk relating to trade in stolen property.

The Government has accepted the review recommendations and expects to introduce amending legislation to Parliament in 2003. While the proposed reforms are consistent with the CPA guiding principle, New South Wales has not complied with its CPA obligations in this area because it has not completed its review and reform.

The ACT

The ACT's *Boxing Control Act 1993* bans the conduct of boxing contests without the approval of the Minister, and requires officials and contestants in professional contests to be registered under the New South Wales Boxing and Wrestling Control Act. References to the New South Wales Act in the ACT's legislation have prevented the ACT from starting its review before New South Wales completed its review (see above for details). New South Wales recently announced that it does not intend to alter its regulatory framework because there are public benefits from regulating participation in dangerous combat sports. Consequently, the ACT's legislative restrictions on competition in boxing also comply with CPA obligations.

The *Collections Act 1959* governs public collections and fundraising. Under the Act, people or organisations collecting donations from members of the public in public places must hold a licence. The ACT Government commissioned the Allen Consulting Group to review the Act in conjunction with the Hawkers Act. The review recommended:

- removing the power to refuse a licence based on where the funds are to be spent or on the level of fundraising costs or remuneration for collectors;
- streamlining the licensing system by issuing licences for periods of time rather than particular days, and requiring annual reporting of funds raised and expenses incurred rather than reporting for each collection; and
- increasing disclosure to the community by requiring collectors to wear a badge (or display information) relating to the collection and nature of the collector (volunteer, staff member or paid collector).

The ACT Government supported the major recommendations of the review. The *Charitable Collections Act 2003*, which replaces the Collections Act, will commence in September 2003. Consequently, the ACT has met its CPA obligations in relation to review and reform of its legislation regulating collection organisations.

Table 5.12: Review and reform of legislation regulating other occupations licensed by some, but not all jurisdictions

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Migration Act 1958,* part 3 (migration agents)	Licensing, registration, entry requirements (qualifications, good character), disciplinary processes, business conduct (adherence to code of conduct)	Review was completed in 1997 in combination with a review of the *Migration Agents Registration (Application) Levy Act 1992* and the *Migration Agents Registration (Renewal) Levy Act 1992*. Review concluded that voluntary self-regulation was not immediately achievable due to consumer protection concerns, and that a transitional arrangement is required to enable the industry to prepare for self-regulation.	The Government accepted the review findings and passed legislation implementing statutory self-regulation for two years from March 1998 then voluntary self-regulation. Statutory self-regulation was extended to March 2003 after a review in 1999 found the industry was not ready for voluntary self-regulation.	Meets CPA obligations (June 2002)
New South Wales	*Boxing and Wrestling Control Act 1986*	Conduct of professional boxing, wrestling and amateur boxing contests	Issues paper was released in July 2001. Final report was submitted to the Minister for Sport and Recreation in February 2002.	The Government anticipated considering a reform proposal and introducing amending legislation during 2002.	Meets CPA obligations (June 2003)
	Entertainment Industry Act 1989	Licensing (entertainment industry agents, managers, venue consultants), maximum fees (entertainment industry agents)	Review is under way. Issues paper was released in September 2001. Final report is being prepared. The draft review found no competition issues, but that compliance and enforcement could be improved.	The Government anticipated making a decision on the final report soon, but based on the draft report, does not need to make legislative changes to meet its CPA obligations.	Meets CPA obligations (June 2003)
	Wool, Hides and Skins Dealers Act 1935	Restrictions on the buying and selling of wool, hides and skins	Issues paper in 1998 recommended the repeal of the Act. Pastoral and Agricultural Crime Working Party recommended retention as a deterrent to crime. Final review report supported this view.	The Government accepted the review findings and anticipates introducing amending the legislation in 2003.	Review and reform incomplete

(*continued*)

Table 5.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Introduction Agents Act 1997*	Negative licensing, business conduct (disclosure requirements, cooling-off period, restriction on advance payments to 30 per cent of the total contract price)	New legislation, examined under Victoria's legislation gatekeeping arrangements. Legislation was introduced after other forms of intervention failed to correct problems in the introduction services market. Government considered that the benefits (better informed consumers and reduced consumer loss) outweigh the compliance costs.		Meets CPA obligations (June 2001)
	Professional Boxing and Martial Arts Act 1985	Registration (professional contestants, promoters, trainers, match-makers, referees, judges), business conduct	Department review was completed in August 1999. Consultation involved release of discussion paper, receipt of submissions and further targeted consultation. It recommended streamlining the contestant registration system so the Act refers to competition in a professional contest (rather than a boxing or martial arts contest); examining scope for replacing detailed rules and conditions with less prescriptive national or international standards; and amending the provision that exempts the Victorian Amateur Boxing Association from the Act so other suitable qualified amateur boxing associations can be exempted.	The Government accepted all the recommendations except that to examine the scope for replacing detailed rules with national standards. The Government rejected this recommendation because the industry is fragmented into bodies following various rules, so it is not possible for it to adopt one set of rules. Amending legislation was passed in 2001 (which also changed the Act's name to the *Professional Boxing and Combat Sports Act 2001*).	Meets CPA obligations (June 2002)

(*continued*)

Table 5.12 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Boxing Control Act 1987*	Registration (boxers, trainers, promoters, judges)	Departmental review completed in 1997. It found that restrictions limiting who can practise as a boxer, promoter or manager of boxers, and rules to ensure the health of boxers is satisfactory, improve boxer welfare, reduce serious injuries and boxer health care costs, reduce litigation over claims of fraud and personal injury, and reduce costs for promoters.	The Government endorsed the review and retained the legislation without reform.	Meets CPA obligations (June 2001)
	Firearms Act 1973	Registration (firearm repairers)	Act was removed from the legislation review timetable in view of a national approach to firearms policy.		Meets CPA obligations.
ACT	*Boxing Control Act 1993*	Registration (professional boxers, officials, promoters (defined in NSW Boxing and Wrestling Control Act)	The ACT review could not be done independently of the NSW Boxing and Wrestling Control Act Review. NSW completed its review in 2002.	Act will be amended to reflect relevant changes in NSW.	Meets CPA obligations (June 2003)
	Collections Act 1959	Licensing (fit and proper person, cause in the public interest, costs/remuneration not likely to be excessive, funds raised to be applied in ACT unless no ACT body supports that cause), business conduct (reporting of funds raised and costs).	Review by The Allen Consulting Group, in conjunction with review of the *Hawkers Act 1936* in 2000. Review involved targeted public consultation, with an issues paper, meetings and written submissions. It recommended: not limiting the level of costs/remuneration; removing the power to refuse a licence based on where the funds are to be spent; continuing to allow the refusal of licences on public interest grounds; not limiting the locations of or number of collections; requiring licensees to report funds raised and costs on an annual basis rather than for individual collections; and requiring collectors to wear a badge or prominently display information about the collection.	The Government accepted most review recommendations. The *Charitable Collections Act 2003*, which replaces the Collections Act, will commence in September 2003.	Meets CPA obligations (June 2003)