9 Social regulation: education, child care and gambling

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

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

Education

All States and Territories have competition restrictions in their legislation governing the education sector. Education legislation may be categorised as:

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

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

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

Restrictions on competition

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

Regulating in the public interest

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

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

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

Review reports have stressed the need to maintain educational standards. Ideally, regulation that is in the public interest should not restrict providers that clearly meet required educational, student welfare and financial standards from offering education services. Tables 9.1–9.3 summarise State and Territory governments' progress in reviewing and reforming legislation regulating general education, vocational education and training, and universities.

General education provisions

Review and reform activity

The Council previously assessed New South Wales, Victoria, South Australia and Tasmania (except for the *Christ College Act 1926*) as having met their Competition Principles Agreement (CPA) clause 5 obligations in this area. The Council also assessed Queensland's review and reform of the *Education Capital Assistance Act 1993* and the *Education (Overseas Students) Act 1996*, and the ACT's review and reform of the *Board of Senior Secondary Studies Act 1997* and the *Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994* as meeting the CPA clause 5 obligations.

Table 9.1 summarises the progress of governments' review and reform of legislation that regulates general education. Each jurisdiction's progress is discussed in the following sections.

Queensland

The review of the *Education (General Provisions) Act 1989* recommended:

- changing the provision dealing with entry into the market for supplying education in overseas curriculum. The recommended changes included the preparation of guidelines for the criteria on which to base the approval of the Governor in Council; and

- retaining the power of the Director-General to prohibit the sale of an item or class of items in State school tuckshops.

The Government accepted the review recommendations, which were given effect by legislative amendments included in the *Education (Miscellaneous Amendments) Act 2002*, which commenced on 13 December 2002.

The review indicated that a separate review of restrictions on entry to the market for non-State school education — restrictions embodied in s. 2(2) of the Act — would be undertaken. The separate review would be part of the proposed new legislative arrangements for the approval and accreditation processes for the non-State school sector. The new legislation to regulate the accreditation of non-State schools, the *Education (Accreditation of Non-State*

Schools) Act 2001, commenced in January 2001. This Act was reviewed under Queensland's gatekeeping arrangements (see volume 2, chapter 13).

The Council assesses Queensland as having met its CPA clause 5 obligations in relation to this Act.

A review of the *Grammar Schools Act 1975* was completed in September 1997. A second review was completed in June 2002. It recommended removing the minimum financial requirement for the establishment of a grammar school. A third, and wider, review of the Act, to consider the impact of other legislation for the accreditation of non-State schools and the financial administration of grammar schools, was completed in March 2003. In that month, the Government authorised the preparation of a Bill to implement the recommendations of both the NCP and wider reviews (the latter of which have been examined under gatekeeping requirements). Queensland advised that the amending Bill was introduced to Parliament on August 2003 for debate in early September 2003.

The Council assesses Queensland as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

Western Australia

Western Australia is reviewing the *Education Service Providers (Full Fee Overseas Students) Registration Act 1992* under the NCP. Given that the review is still under way, the Council assesses Western Australia as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

Tasmania

The *Christ College Act 1926* was thought to provide a possible advantage to Christ College relative to other schools and thus was to be repealed. Tasmania advised the Council, however, that the Department of Education recently provided the Government with information why this Act does not contain any restrictions on competition. The Government agreed and has removed the Act from the review program. The Council assesses Tasmania as having met its CPA clause 5 obligations in relation to this Act.

The ACT

The ACT reviewed the *Education Act 1937*, the *Free Education Act 1906* (NSW), the *Public Instruction Act 1880* (NSW) and the *Schools Authority Act 1976*. The reviews involved extensive consultation and made 23 recommendations, including:

- establishing a single Act for schooling in the ACT;

- considering teacher registration for the professional enhancement of teachers in the ACT;
- retaining legislative provisions for the establishment and re-registration of nongovernment schools; and
- reviewing the licensing arrangements for independent preschools that are attached to registered nongovernment schools.

The ACT Government reported that the exposure draft of education legislation was introduced into the Legislative Assembly on 6 June 2002. A consultation period followed until 4 October 2002, to allow for public comment and submissions. The ACT Government received a substantial report from the Inquiry into Education Funding in the ACT. The inquiry report contained recommendations on the registration and accountability requirements for nongovernment schools. The ACT Government accepted the recommendations and is preparing amending legislation for introduction and passage in the spring 2003 sittings of the Legislative Assembly. The Council assesses the ACT as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

The Northern Territory

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

The Government later advised that it decided, following further discussion about the proposal, and in consultation with the nongovernment school sector, to clarify the requirements through administrative arrangements instead of Regulations. It will develop administrative arrangements in consultation with the nongovernment school sector. The administrative arrangements will be flexible, to respond to changing circumstances, and will deal with only core requirements for registration that are in the public interest.

The Council considers that the action proposed by the Northern Territory will meet its CPA clause 5 obligations. Given that reform of the legislation is not required, the Council assesses the Northern Territory as having met its CPA clause 5 obligations in relation to general education provisions.

Vocational education and training

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

Review and reform activity

The Council previously assessed New South Wales, Victoria, Queensland, Western Australia, South Australia, the ACT and the Northern Territory as having met their CPA clause 5 obligations. These jurisdictions completed their review and reform activity, finding that legislative restrictions in this area provide a net public benefit and thus retaining the legislation without change. Table 9.2 summarises the progress of governments' review and reform of legislation that regulates vocational education and training.

Tasmania

The *Vocational Education and Training Act 1994* restricts competition by establishing conditions for the registration of training providers and the accreditation of training courses. Tasmania completed a review of the Act in 2001, publishing a regulatory impact statement which involved extensive public consultation. Cabinet endorsed the review recommendations on 11 August 2003 and legislation is scheduled for introduction by 21 October 2003. The Council assesses Tasmania as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

Universities

Universities are generally established by a separate Act that provides for their governance. A further category of legislation provides for the accreditation of new universities or other tertiary education providers wishing to operate within the jurisdiction.

Review and reform activity

Table 9.3 summarises the progress of governments' review and reform of legislation that regulates universities.

Legislation that establishes universities

The Council previously assessed Queensland, Western Australia (in relation to the *University Colleges Act 1926*) and the ACT as having met their CPA clause 5 obligations in this area. New South Wales, Victoria, South Australia, Tasmania and the Northern Territory did not include this area of legislation in their review programs because the legislation of these jurisdictions does not contain significant restrictions on competition and thus does not require review under the NCP.

Western Australia

Western Australia completed legislation reviews of its universities' enabling Acts in 1999. The reviews concluded that most restrictions are minor and in the public interest, while recommending that the investment powers of Edith Cowan University be aligned with those of other universities. The review recommended that university activities that are predominantly commercial in nature should be provided on a fee-for-service basis with direct outside competition. The review also recommended that universities should introduce full commercial pricing policies in most cases.

Review matters relating to local council rates, State taxes and land tenure were deferred to the competitive neutrality review of the universities, which the Government endorsed on its completion. The review of universities recommended the adoption of competitive neutrality by university business activities, proposing the establishment of a rigorous process for handling competitive neutrality complaints. It further recommended that this process involve the Department of Education Services.

As a result of the review, the Government is drafting legislation to clarify the powers of universities to engage in commercial activities in Western Australia and outside of Western Australia, including activities that do not directly relate to the universities' core functions of education and research. The State's Acts Repeal and Amendment (Competition Policy) Bill 2002 is progressing the necessary amendments to the *Edith Cowan University Act 1984*. One amendment will require that universities comply with guidelines approved by the Minister for Education on the advice of the Treasurer. The guidelines will govern the types of commercial activity in which a university could engage. Particularly important will be the arrangements that govern the financial monitoring of universities' commercial activities, such as the requirement that universities report to the Treasurer. The Council assesses Western Australia as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

Registration of universities and accreditation of university courses

The Ministerial Council on Education, Employment, Training and Youth Affairs endorsed the National Protocols for Higher Education Approval Processes on 31 March 2000 (Department of Education Training and Youth

Affairs 2000). The protocols have been designed to ensure consistent criteria and standards across Australia in matters such as the recognition of new universities, the operation of overseas higher education institutions in Australia and the accreditation of higher education courses offered by providers that are not self-accrediting. Legislation relevant to these aspects of higher education should comply with the protocols developed by the Ministerial council and meet the CPA test.

In its 2001 NCP assessment, the Council assessed South Australia, Tasmania and the ACT as having met their CPA clause 5 obligations in this area. In its 2002 NCP assessment, the Council assessed New South Wales, Victoria and Queensland as having met their CPA clause 5 obligations in this area. These jurisdictions reviewed legislation requiring the registration of universities and the accreditation of university courses, and retained competition restrictions in the public interest.[2] Western Australia does not have this type of legislation.

The Northern Territory

The Northern Territory did not include its *Education Act* (which also regulates higher education) on its original NCP legislation review program. The Government did, however, review s. 73A of the Act to determine whether any changes were required to reflect the National Protocols for Higher Education Approval Processes. The review identified areas in which the Act should be amended. The Government discussed these with relevant stakeholders, but did not intend to consider the matter further before 30 June 2003. The Council assesses the Northern Territory as not having met its CPA clause 5 obligations in relation to the Act's higher education provisions because it has not completed the reform process in this area.

Teachers

When the NCP legislation review program commenced in 1996, both Queensland and South Australia required all teachers in government and nongovernment schools to be registered. Victorian legislation required nongovernment teachers to be registered. It also required teachers with interstate qualifications taking up a job in government schools to have their qualifications assessed and to undergo a 'good character' check. In 2000, Tasmania passed legislation requiring all government and nongovernment teachers to be registered.

These governments conducted NCP reviews of their legislation requiring the registration of teachers. Each review found that registration was in the public

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

interest. The Governments argued that the regulation of teachers is generally beneficial because it ensures teachers have minimum qualifications and a minimum level of competence, and it prevents schools from employing persons who are not of good character. Tasmania also argued that registration is important in raising the status of the teaching profession. In its 2001 NCP assessment, which considers teacher registration in more detail, the Council assessed Victoria, Queensland, South Australia and Tasmania as having met their CPA clause 5 obligations in this area.

Competitive neutrality

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

For businesses not subject to executive control (which include university businesses), CoAG stated in November 2000 that the assessment of a government's compliance with competitive neutrality requirements should look for a 'best endeavours' approach. Under this approach, the relevant government must at least provide the business entity concerned with a transparent statement of competitive neutrality obligations. Jurisdictions' NCP annual reports indicate that governments are complying with the CoAG suggested approach.

All jurisdictions, except Western Australia, now apply competitive neutrality principles to the business activities of their TAFE institutions. Western Australia conducted a competitive neutrality review of TAFE colleges and Cabinet has endorsed the recommendations. Western Australia deferred NCP review matters relating to local council rates, State taxes and land tenure to a competitive neutrality review of the universities. The latter review recommended that university businesses adopt competitive neutrality principles. Western Australia is drafting legislation to clarify the powers of universities to engage in commercial activities, on which they will have to provide financial reports to the Treasurer when requested. The review also recommended the establishment of a rigorous process for dealing with competitive neutrality complaints involving universities.

Table 9.1: Review and reform of legislation regulating general education

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

(*continued*)

Table 9.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Education (General Provisions) Act 1989* and Regulations		This review recommended changing the provision dealing with entry into the market for supplying education in overseas curriculum. The changes included the preparation of guidelines for the criteria on which to base the approval of the Governor in Council. A further recommendation was to retain the power of the Director-General to prohibit the sale of an item or class of items in State school tuckshops.	The review was accepted and legislative amendments were made effective from 13 December 2002.	Meets CPA obligations (June 2003).
	Education (Overseas Students) Act 1996	Requires registration of providers of education to overseas students	Review was completed in January 2000. NCP justification was provided for 1999 amendments.	Existing regulatory regime was retained in the public interest, as decided at June 2000.	Meets CPA obligations (June 2001).

(*continued*)

Table 9.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Grammar Schools Act 1975*	Regulates the establishment of new public grammar schools	Review was re-opened (the original report was completed in September 1997) and completed in June 2002. It recommended that the minimum financial requirement governing the establishment of a grammar school be removed. A wider review of the Act, to consider the impact of new processes in other legislation for the accreditation of nongovernment schools and the financial administration of Grammar schools, was also carried out in March 2003.	In March 2003, the Government authorised the preparation of a Bill to implement the recommendations of both the NCP and wider review. The Bill was introduced in August 2003 for debate in early September 2003.	Review and reform incomplete.
Western Australia	*Education Service Providers (Full Fee Overseas Students) Registration Act 1992*	Requirement of registration of providers of education to overseas students	Review is under way.		Review and reform incomplete.
South Australia	*Education Act 1972* and Regulations	Barriers to market entry, restriction on market conduct for teachers and nongovernment schools	Review was completed in July 2000. It found that restrictions on competition are justified in the public benefit.	The Act was retained without reform.	Meets CPA obligations (June 2001).

(*continued*)

Table 9.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania	*Christ College Act 1926*	Possible advantage over other schools (an originally perceived restriction on that led the Government to intend to repeal the Act)	The Department of Education recently provided information why this Act does not contain any restrictions on competition. The Government agreed.	The Act has been removed from the review program.	Meets CPA obligations (June 2003).
	Education Act 1994	Requirement of registration of nongovernment schools	Review was completed in December 2000. It found that restrictions on competition are justified in the public benefit.	Act was retained without reform.	Meets CPA obligations (June 2001).
	Education Providers Registration (Overseas Students) Act 1991	Requirement of registration of providers of education to overseas students	As above.	Act was retained without reform.	Meets CPA obligations (June 2001).
	Hutchins School Act 1911	Provision of a possible advantage not given to other schools		Act was repealed in 2001.	Meets CPA obligations (June 2002).
ACT	*Board of Senior Secondary Studies Act 1997*	Accreditation procedures for courses	Intradepartmental review was completed in 1999. The review found that the legislation maintained uniform standards for senior secondary courses and certification.	Act was retained without reform.	Meets CPA obligations (June 2002).

(*continued*)

Table 9.1 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT (continued)	*Education Act 1937* *Schools Authority Act 1976* *Public Instruction Act 1880* *Free Education Act 1906*	Requirement of registration of schools	Review completed. Government received a substantial report from the Inquiry into Education Funding in the ACT. The Inquiry Report made recommendations on the registration and accountability requirements for nongovernment schools.	The Government accepted the recommendations and is preparing amending legislation for introduction and passage in the spring 2003 sittings of the Legislative Assembly.	Review and reform incomplete.
	Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994	Requirement of registration of providers of education to overseas students		Act was repealed.	Meets CPA obligations (June 2002).
Northern Territory	*Education Act*	Requirement of registration of nongovernment schools	A departmental review found restrictions on the registration of nongovernment schools were in the public interest. After consultation the Northern Territory decided that the requirements would be clarified through administrative arrangements instead of Regulations.	The Government will develop administrative arrangements in consultation with the nongovernment school sector. The administrative arrangements will be flexible, to respond to changing circumstances, and will deal with only core requirements for registration that are in the public interest.	Meets CPA obligations (June 2003)

Table 9.2: Review and reform of legislation regulating vocational education and training

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Vocational Education and Training Accreditation Act 1990*	Requirement of registration of training providers and accreditation of training courses	Review involved extensive consultations with external stakeholders, including private providers and the university sector.	The Act was amended	Meets CPA obligations (June 2002).
Victoria	*Vocational Education and Training Act 1990*	Requirement of registration of training providers and accreditation of training courses	Review was completed in 1998.	Act retains restrictions relating to accreditation, the registration of private providers and the Ministerial setting of fees as being in the public interest.	Meets CPA obligations (June 2001).
Queensland	*Vocational Education, Training and Employment Act 1991*	Requirement of registration of training providers and accreditation of training courses	Minor review was carried out in 1997 on the then proposed Vocational Education and Training Bill and Institute Bill to replace this Act. A further minor review was undertaken of the proposed Training and Employment Bill which replaced these Bills. This Bill was considered to impose fewer restrictions on providers than imposed by the 1991 Act that it replaced. It also delivered greater flexibility for employers, registered training bodies and trainees.	The Act implementing a national scheme of training received assent in June 2000.	Meets CPA obligations (June 2001).

(*continued*)

Table 9.2 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Vocational Education and Training Act 1996*	Requirement of registration of training providers and accreditation of training courses	Review was completed in 1999, concluding that the restrictions on competition are minimal and that public benefits arising from the restrictions outweigh the costs.	Act was retained without reform.	Meets CPA obligations (June 2001).
South Australia	*Vocational Education, Employment and Training Act 1994*	Requirement of registration of training providers and accreditation of training courses, including courses leading to the conferring of a degree	Review was completed in April 2000, concluding that the public benefits of restrictions outweigh the costs.	Act was retained without reform.	Meets CPA obligations (June 2001).
Tasmania	*Vocational Education and Training Act 1994*	Requirement of registration of training providers and accreditation of training courses	Review was completed in 2000. Cabinet endorsed its recommendations.	The required amendments arising from the review of the Act will be introduced by 21 October 2003.	Review and reform incomplete.
ACT	*Vocational Education and Training Act 1995*	Requirement of registration of training providers and accreditation of training courses	Intradepartmental review concluded that public benefit of restrictions outweighs costs.	Act was retained without reform. Amendments were proposed to meet national requirements for mutual recognition of training providers.	Meets CPA obligations (June 2001).
Northern Territory	*Northern Territory Employment and Training Authority Act*	Requirement of registration of training providers and accreditation of training courses	Act was not included in legislation review schedule. The Northern Territory advised the Council that its legislation is consistent with that of other jurisdictions in which reviews found that restrictions provide a net public benefit.		Meets CPA obligations (June 2002).

Table 9.3: Review and reform of legislation regulating universities

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

(*continued*)

Table 9.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*University of Southern Queensland Act 1998* *University of Queensland Act 1998* *James Cook University Act 1997* *Queensland University of Technology Act 1998* *Griffith University Act 1998* *Central Queensland University Act 1998* *University of the Sunshine Coast Act 1998*	Potential restrictions on the ability of each university to apply revenue, in that revenue must be applied solely for university purposes	Review was completed in 2001. It found that the restriction does not have a significant impact on competition.	Act was retained without reform.	Meets CPA obligations (June 2002).
	Higher Education (General Provisions) Act 1989	Accreditation and monitoring procedures for higher education providers that wish to establish in Queensland	Review was completed in 2001. It recognised the value of accreditation provisions being nationally uniform. It found that the restrictions were justified on public benefit grounds.	The Treasurer endorsed the review recommendations in August 2001. The existing regulatory regime was retained in the public interest	Meets CPA obligations (June 2002).

(*continued*)

Table 9.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	*Curtin University of Technology Act 1966* *Edith Cowan University Act 1984* *Murdoch University Act 1973* *University of Notre Dame Australia Act 1989* *University of Western Australia Act 1911*	Provisions governing the investment of university funds (with variation across universities)	Review was completed in 1998, concluding that most restrictions were minor and in the public interest, and that investment provisions for Edith Cowan should be aligned with other universities.	The Government endorsed the review recommendations. The amendments to the Edith Cowan University Act are being progressed through the Acts Amendment and Repeal (Competition Policy) Bill 2002 which is before Parliament.	Review and reform incomplete.
	University Colleges Act 1926	Restriction on access to university lands, controls on the use of land and provision for the transfer of vested land to freehold land	Review was completed in 1998. Restrictions were assessed as being in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2001).
South Australia	*University of Adelaide Act 1971* *Flinders University of South Australia Act 1966* *University of South Australia Act 1990*	No restrictions on competition	Review was not required.	Acts were retained without reform.	Meets CPA obligations (June 2002).
Tasmania	*Universities Registration Act 1995*	Requirement of registration of institutions wanting to operate as universities , provision for conditions to be imposed on universities conduct	Minor review was completed. Restrictions relating to the registration and accreditation of private universities were retained in the public interest.	Act was retained without reform.	Meets CPA obligations (June 2002).

(*continued*)

Table 9.3 continued

Jurisdiction	*Legislation*	*Major restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Canberra Institute of Technology Act 1987*	An exemption from ACT taxes and charges (cabinet decided that the ACT Revenue Office would review the institute's taxation liability in the second half of 1998)	Review was completed in 1999. Act was assessed as not restricting competition.	Act was retained without reform.	Meets CPA obligations (June 2001).
	University of Canberra Act 1989	No restrictions on competition	Review was not required.	Act was retained without reform.	Meets CPA obligations (June 2001).
Northern Territory	*Education Act*	Provision of a framework for the operation of higher education institutions	Review identified areas in which the Act should be amended.	The Government discussed the reforms with relevant stakeholders, but did not intend to consider the matter further before 30 June 2003.	Review and reform incomplete.

Child care

Child care generally refers to arrangements for the care of children (usually under 12 years of age) by people other than their parents. It can be formal child care — such as preschool, a child care centre, family day care and before and after school care — or informal care, which is nonregulated and includes care by family members, friends and paid babysitters.

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

Review and reform activity

State and Territory governments' NCP legislation review program includes legislation regulating child care. In its 2001 NCP assessment, the Council assessed the ACT as having met its CPA clause 5 obligations in this area. In its 2002 NCP assessment, the Council assessed the Commonwealth, Victoria, South Australia (for the *Children's Services Act 1985*) and Tasmania as having met their CPA clause 5 obligations. Table 9.4 summarises the progress of governments' review and reform activity relating to the regulation of child care.

New South Wales

New South Wales is planning to replace the *Children (Care and Protection) Act 1987*, which regulates commercial child care services, with a Regulation in the *Children and Young Persons (Care and Protection) Act 1998*. The Regulation is proposed to replace the Centre Based and Mobile Child Care Services Regulation (No. 2) 1996 and the Family Day Care and Home Based Child Care Regulation 1996, which were made under the 1987 Act. The Regulation will include provisions for the licensing of children's services, information for parents, child numbers, staffing standards, facility standards and administrative procedures and policies.

In accordance with the requirements of the *Subordinate Legislation Act 1989*, a regulatory impact statement was prepared to assess the potential benefits and costs of the proposed regulatory model, as well as any options that may be capable of meeting the legislative objectives. The regulatory impact

statement indicates that the restrictions on competition (primarily licensing and standards setting) are in the public interest. The regulatory impact statement preferred the proposed regulations to alternative licensing schemes, because the net benefits outweighed the costs. New South Wales is awaiting public feedback on the regulatory impact statement before implementing new legislation.

Because New South Wales has not completed reform of its child care legislation, the Council assesses it as not having met its CPA clause 5 obligations in this area.

Queensland

A major review of Queensland's child care legislation and its NCP implications began in 1999 and was completed in May 2002. The review examined the impact of licensing fees and the costs of meeting licensing requirements. These costs arise from the requirements to employ qualified staff and meet building and facility standards. The review also examined the impact of regulating different service types within the child care sector that have not been previously regulated.

The government endorsed the review in June 2002. The review recommended the adoption of the regulatory tiering framework proposed for the regulation of child care in Queensland. As a result, the *Child Care Act 2002* was passed on 1 November 2002 and the Child Care Regulation 2003 is being finalised. Both the Act and Regulation are expected to commence operation on 1 September 2003.

The Council notes that the Act, while passed, is not in operation. Queensland advised that the Act will not begin operation until the Regulation is passed. The Council thus assesses Queensland as not having met its CPA clause 5 obligations because it has not completed the reform process in this area. Nevertheless, the Council accepts the need for synchronising the operational dates of the Act and the Regulation, provided that unreasonable delays do not result. As long as Queensland is able to meet its proposed timetable for reform, the delay appears reasonable.

Western Australia

The State's NCP legislation review program did not include the *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988, which regulate child care and the registration of child carers in Western Australia.

Nevertheless, the Department of Community Development carried out a NCP review of the existing child care legislation, which was completed in June 2002. The Expenditure Review Committee agreed to the review report on 5 February 2003, and Cabinet subsequently endorsed it on 10 February 2003.

The review recommended retaining the restrictions in the *Community Services Act 1972* and the Community Services (Child Care) Regulations 1988 because they are in the public interest, and expanding the current three-yearly review process of the Regulations to encompass day care outside of school hours. Another recommendation was to consider, via the three-yearly review process, changing prescriptive regulations to a more outcome-based system within the regulatory framework.

A Bill to replace this and other Acts is being developed and is expected to be considered in the spring 2003 sitting of Parliament. The Council assesses Western Australia as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

South Australia

The review of the *Children's Protection Act 1993* found that restrictions in the Act are unjustified and may limit the ability to appoint an officer best suited to needs of the child. Cabinet approved drafting amendments in August 2000. The 2002-03 Child Protection Review recommended further amendments to the Act. Competition policy amendments will be progressed jointly with the child protection recommendations. Implementation of the recommendations is expected to occur in 2003-04, with amendments to the Act to be introduced into Parliament in the second half of 2004. The Council assesses South Australia as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

The Northern Territory

The Northern Territory review of the *Community Welfare Act* was completed in April 2000. The review concluded that there was a strong net community benefit in retaining the potentially anticompetitive elements of the Act, but recommended:

- either enforcing or removing the licensing requirements for children's homes;
- re-framing child care centre standards as outcomes rather than prescribed standards;
- clarifying the basis and status of standards for child care; and
- broadening the scope of child care activities that are brought within the licensing net to encompass all forms of purchasable child care service.

The Government considered that the public interest would be best served by not attempting to institute such reforms in isolation and with limited public consultation by June 2003. Rather, it decided to undertake the reforms as part of a broad early childhood strategy to be determined in 2003 following

extensive community consultation, with revised legislation to be implemented from July 2005.

As a result, the Northern Territory advised that the amendments to the Community Welfare Act will take place in two stages. The first stage will address the NCP requirements by amending part X of the Act (which deals with the licensing of children's homes, etc). The second stage will involve a complete review of the Act to replace it with more contemporary legislation.

The first stage in amending part X to address NCP requirements involves the preparation of a discussion paper for community input. Following approval of the paper, the Minister will endorse the broad policy approach to the amendments. The Northern Territory advised that amendments to part X of the Act will be introduced to the Legislative Assembly in November 2003. Passage of the amendments is expected in the February 2004 sittings. The Council assesses Northern Territory as not having met its CPA clause 5 obligations because it has not completed the reform process in this area.

Table 9.4: Review and reform of legislation regulating child care

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*A New Tax System (Family Assistance) Act 1999* *A New Tax System (Family Assistance Administration) Act 1999*	Payment of the Child Care Benefit to families using 'approved' child care services	The Commonwealth Government provided the Council with a public benefit case for the legislation. Approval is necessary to maintain the quality of services. The conditions for approval are not unduly onerous and do not discriminate among providers.		Meets CPA obligations (June 2002)
New South Wales	*Child (Care and Protection) Act 1987* *Children and Young Persons (Care and Protection) Act 1998*	Licensing	New South Wales will replace *the Children (Care and Protection) Act 1987*, which regulates commercial child care services, with regulations in the *Children and Young Persons (Care and Protection) Act 1998,* which provides for the licensing of children's services, information for parents, child numbers, staffing standards, facility standards and administrative procedures and policies.	A regulatory impact statement was prepared, identifying the costs and benefits of the new Regulations, as well as the benefits and costs of alternative schemes of licensing. It found that the proposed method in the Regulations was best, because the net benefits outweighed the costs. The new Regulations are yet to be implemented.	Review and reform incomplete
Victoria	*Children's Services Act 1996*	Licensing, operating requirements, standards setting	Act was reviewed as part of the gatekeeper process when introduced. Victoria considers that the provisions of the Act are necessary to ensure appropriate standards of child care and will stimulate competition in the industry.		Meets CPA obligations (June 2002)

(*continued*)

Table 9.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Child Care Act 1991* Child Care (Child Care Centres) Regulation 1991 Child Care (Family Day Care) Regulation 1991	Licensing, operating requirements, standards setting	Review was completed in May 2002 and endorsed by the Government in June 2002. Its public benefit test recommended adopting the regulatory tiering framework proposed for the regulation of child care in Queensland.	The *Child Care Act 2002* was passed on 1 November 2002. The Child Care Regulation 2003 is being finalised, and both the Act and Regulation are expected to commence operation on 1 September 2003.	Review and reform incomplete
Western Australia	*Community Services Act 1972* and the Community Services (Child Care) Regulations 1988	Licensing, standards, operating procedures	NCP review was completed in June 2002 and endorsed 10 February 2003. The review recommended retaining the restrictions because they are in the public interest, and expanding the current three-yearly review process of the Regulations to encompass day care outside of school hours day. Another recommendation was to consider, via the three-yearly review process, changing prescriptive regulations to a more outcome-based system within the regulatory framework.	A Bill to replace this Act is being developed and is on the Parliament's legislative agenda for 2003. The Bill is expected to be considered in the spring sitting of Parliament.	Review and reform incomplete
South Australia	*Children's Services Act 1985*	Licensing, standards, operating procedures	Review was completed in 2000.	Act was retained without reform.	Meets CPA obligations (June 2002)

(*continued*)

Table 9.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia (continued)	*Children's Protection Act 1993*	Licensing, standards operating procedures	Review was completed in 2000. It found that that restrictions in the Act may limit the ability to appoint an officer best suited to needs of the child. A Child Protection Review in 2002-03 recommended further amendments to the Act and South Australia advised that NCP amendments will be progressed jointly with the child protection recommendations.	Implementation of the recommendations will occur in 2003-04 and amendments to the Act will be introduced into Parliament in the second half of 2004.	Review and reform incomplete.
Tasmania	*Child Welfare Act 1960*		The child care provisions of the Act were transferred to new child care legislation: the *Children, Young Persons and their Families and Youth Justice (Consequential Repeals and Amendments) Act 1998* and the *Child Care Act 2001*.	Anticompetitive elements were identified in the gatekeeping process. A regulatory impact statement was made available for public comment in September 2000.	Meets CPA obligations (June 2002)
ACT	*Children's Services Act 1986*	Licensing, standards setting	Public review was completed in 1999.	Act was assessed as not restricting competition. The Legislative Assembly passed the replacement Act, the *Children and Young People Act 1999*, on 21 October 1999.	Meets CPA obligations (June 2001)

(*continued*)

Table 9.4 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Community Welfare Act*	Licensing, standards setting	Targeted review was completed in 2000. It recommended: either enforce or remove the licensing requirements for children's homes; re-frame child care centre standards as outcomes rather than prescribed standards; clarify the basis and status of standards for child care; and broaden the scope of child care activities that are brought within the licensing net to encompass all forms of purchasable child care service.	Part X of the Act dealing with the licensing of children's homes will be amended. A complete review of the Act will then commence, with a view to replacing it with more contemporary legislation. Amendments will be introduced in the November 2003 sittings of the Legislative Assembly. Passage is expected in the February 2004 sittings.	Review and reform incomplete

Gambling

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

Gambling encompasses a wide range of activities, including:

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

Legislative restrictions on competition

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

- the operation of different types of venue, including the distribution of gaming machine licences;
- ownership structures;
- the monitoring of gaming machines;
- the operation of casinos, lotteries and TABs, particularly exclusive licences;

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

- Internet gambling.

Regulating in the public interest

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

Productivity Commission inquiry

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

The Productivity Commission inquiry found that lotto and lotteries are least harmful, while wagering, gaming and casino table games are more harmful. It also found that certain restrictions aimed at minimising harm, ensuring probity and protecting consumers are in the public interest. Several other measures identified by the Productivity Commission — such as exclusive licences, discrimination based on the type of venue and limits on gamblers' access to facilities or on operators' capacity to supply gambling facilities — are less likely to be compliant with the second element of the guiding principle. For these types of legislative restriction, governments must show that there is no less restrictive way in which to achieve the objective of the legislation.

CoAG agreement on gambling

On 3 November 2000 CoAG discussed gambling as a matter of national interest, focusing on problem gambling. CoAG agreed that the Ministerial Council on Gambling would develop a national strategic framework (to be implemented by the State and Territory governments) aimed at prevention, early intervention and continuing support, effective partnerships, and national research and evaluation. CoAG identified measures to begin the process, including ones that apply specifically to gaming machine venues. These include measures that require operators to display warnings about the risks of problem gambling, to enable patrons to be aware of the time spent gambling, and to display information on the chances of winning a major prize.

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

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

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

The Council's approach

The Council published an analysis of its approach to considering review and reform of gambling legislation, taking account of the Productivity Commission findings (NCC 2000). The Council's approach to the main categories of competition restrictions is outlined below.

Consumer protection

Consumer protection measures may include the provision of more and better information concerning the nature of games, the treatment of problem gambling as a public health issue, instigating easy to use self-exclusion measures and redesigning poker machines. The Productivity Commission

findings justify such measures on the basis of harm minimisation and the Council thus considers that jurisdictions that employ these measures could rely on the Productivity Commission arguments to justify the restrictions under NCP.

Probity checks

Probity checking may include measures to prevent the involvement of criminal elements, to ensure that payout ratios are adhered to, to ensure that prizes are appropriately drawn in lotteries and that race meetings are properly conducted. As with consumer protection measures, the Council considers that the Productivity Commission's broad support for these measures provides a clear NCP public benefit justification for them.

Exclusivity

Exclusivity refers to the practice of legislating to grant exclusive rights to the supply certain activities such as casino gambling or lotteries, generally through the issue of exclusive licences. The Productivity Commission cast doubt on the arguments that are frequently raised by jurisdictions in support of exclusivity. It found, for example, that exclusivity arrangements generally do not reduce problem gambling. Exclusive casino licences were an exception, because they restrict access to a particular form of gambling, casino table games. The Productivity Commission noted, however, that table gaming is no longer the dominant gambling activity in most casinos. It considered that other measures — such as harm minimisation programs, including the promotion of a greater understanding of the risks in gambling, self-exclusion procedures, mandatory codes of conduct for operators, and restrictions on access to funds from automatic teller machines (ATMs) at gambling venues — are likely to be more effective than exclusivity in reducing gambling-related harm.

The Productivity Commission found that TAB exclusivity did not appear to be necessary to ensure adequate funding for the racing industry and suggested alternative approaches. It also noted that exclusivity is not essential to ensure probity, pointing out that exclusivity is not the preferred option in other regulated industries with a high probity requirement such as insurance and banking. The Productivity Commission concluded that a better approach would be to institute probity procedures appropriate to the activity and venue. It doubted that regional development provided a sound rationale for gaming licence exclusivity, or that this approach would have any advantages over other policies which would also encourage regional development.

The Productivity Commission also rejected the case commonly put for exclusive lottery licences, that such arrangements allow bigger prize pools. It noted that in most States and Territories, larger pools are being offered through commercial arrangements in which lottery administrators pool their activities.

The Council has previously accepted that the cost of compensating licence holders, where exclusive licences are revoked, may justify a decision not to revoke these licences. However, given the Productivity Commission's view that exclusivity is generally inconsistent with NCP principles, the Council considers that NCP compliance implies that exclusive licences should not be renewed and new exclusive licences should not be agreed without a strong public benefit argument.

Restrictions on venue types

All jurisdictions place restrictions on the places where gambling may be offered. A rationale for these restrictions is to limit gambling to adults by linking gambling and liquor licences. An important restriction in all jurisdictions is different regulation of gaming machines for clubs and hotels. The Productivity Commission concluded that current venue restrictions are based on '…history and arrangements with particular interests, rather than strong policy rationales.' (PC 1999a, p. 14.32).

The Productivity Commission concluded that there may be benefit from adopting a broad risk management approach to limits across all venue types. That is, one criterion for granting gaming licences ought to be the harm associated with different venue types. It found little evidence that clubs provide a less risky environment than hotels, but noted that allowing hotels parity with clubs in the immediate future would greatly increase the number of gaming machines.

For NCP compliance, the Council considers that differences in the regulation of hotels, casinos and clubs should be supported by a public interest justification in terms of harm minimisation. In the absence of such a case, there should be equivalent treatment. The Council notes, however, that achieving equality of regulation in relation to gaming machines may be a gradual process, given many jurisdictions' reluctance to increase overall machine numbers.

Accessibility

Accessibility refers to the ease with which consumers can use gambling services. For example, it is relatively easy to buy a lottery ticket, with outlets spread widely throughout the community. On the other hand, table games are available only in casinos and the restrictions in the licences to operate casinos mean that opportunities to partake of these gambling activities are restricted to a few locations.

The Productivity Commission noted that restrictions on access often arise from policy objectives such as a desire to assist clubs or raise taxation revenues. It found that such rationales do not withstand scrutiny, arguing that the only rationale for regulating access should be to limit social harms and meet community expectations.

The Productivity Commission canvassed a number of measures currently used to limit access, such as caps on gaming machine numbers, including venue caps and linking of liquor licences to gaming machine licences as a way of denying access to gaming machines by those aged under 18. It suggested how these measures may be best used as well as suggesting other measures which would be more effective in reducing hazards associated with gambling. The Productivity Commission favoured harm minimisation strategies over quantitative restrictions. However, it noted that should these strategies not be put in place, there would be a case for some quantity restrictions where gaming machines are not yet widely available (as in Western Australia) or where existing venue caps are set at relatively low levels (as in Tasmania and South Australia). The Productivity Commission also considered that moves to lift the restrictions in place would need to proceed gradually to allow the impacts to be gauged.

The Council considers that measures aimed at reducing access to gambling that attempt to reduce the incidence of problem gambling will comply with NCP obligations. The Council looks to jurisdictions to demonstrate that access limitation is the only way of achieving this objective.

Review and reform activity

All States and Territories scheduled NCP reviews of their gambling legislation. A number of reviews are completed, although governments have yet to act on their review findings in many cases. Many governments also have new legislation that restricts gambling activity. Clause 5(5) of the CPA obliges them to have evidence that the new legislative restrictions are in the public interest.

In several areas, including racing and lotteries, the development of more competitive arrangements is being hindered by jurisdictions' apprehension that unilateral reform will lead to a loss of market to rivals based in other States. Greater interjurisdictional cooperation is needed to ensure the potential benefits from reform are realised.

Casinos

All Australian casinos, except Burswood Casino in Western Australia, operate with some form of exclusive licence. That is, the casinos have exclusive rights to supply casino games within some geographic boundary. The Productivity Commission inquiry questioned the arguments that governments raised to support exclusive casino licences, but noted that exclusivity arrangements provide a benefit by restricting accessibility to table games. As noted previously, the Productivity Commission considered that more direct measures are likely to be more effective in reducing gambling-related harm. Moreover, the Productivity Commission's suggested measures for improving probity — whereby the type and level of measure match the activity, and the

gambling operator meets the costs — are unlikely to significantly increase the monitoring costs faced by government, even if there are multiple venues. Queensland, Tasmania and the Northern Territory have multiple casinos, yet the cost to government of ensuring probity has not been raised as an issue in these jurisdictions.

The Council accepts that by reducing access to table games, exclusive licences can make a limited contribution to reducing problem gambling. The Council also accepts that the cost of compensating licence holders where exclusive licences are revoked may justify a decision not to revoke current licences.

Governments that have decided to retain exclusive licences can facilitate the removal of those licences. As periods of exclusivity shorten, governments may be able to encourage casino operators to relinquish their exclusive licences earlier than the date in the contract agreement, as occurred in the Northern Territory. Governments can also decide not to renew exclusive casino licences when they expire, as the ACT Government did.

Table 9.5 summarises jurisdictions' progress in reviewing and reforming their casino legislation.

New South Wales

In 1998, the New South Wales Treasury reviewed the *Casino Control Act 1992* that grants an exclusive casino licence for Star City Casino. The review recommended retaining the exclusive licence. It noted that the tender process, the upfront fee and the special casino taxation regime minimise the anticompetitive effects of the licence. The review report also highlighted the increased ease of monitoring for illegal activity, promoting and monitoring product integrity, and managing social problems if there is only one venue. The Government signalled its support for these conclusions, but asked the Treasury to consider further material in developing the review recommendations. A revised report was completed in March 2003.

The revised report reached broadly the same conclusions as those of the first report. It acknowledged that licence exclusivity may not be consistent with NCP principles. However, it found no feasible or less restrictive option for casino gambling at this time, given the nature of the exclusivity agreement with the single licence holder and the liability for substantial compensation for terminating the agreement. Additionally, the revised report found that the exclusive licence arrangement was a reasonable approach to the gradual liberalisation of the gaming market in an environment of community apprehension about the possible social costs.

The revised report drew attention to the competitive selection process for the single licence holder. While noting that the monopoly profits of the venture are shared with the New South Wales public via a progressive taxation regime, the revised report acknowledged that the establishment of exclusivity arrangements to maximise taxation revenue is not a sound basis for the restriction.

The revised report found that other restrictions in the legislative regime focus on consumer protection and probity matters, and are not unduly restrictive. It recommended that the Government consider the case for liberalising the casino gaming market as the 2007 exclusivity expiry date approaches. Specifically, it recommended that consideration be given to providing no new exclusive casino licences, not renewing existing exclusive licences on expiry and removing any legislative barriers to new entry into the casino gaming market. New South Wales anticipates making a final decision on the revised review recommendations in 2003.

Because New South Wales did not complete its reform activity, the Council assesses it as not having met its CPA obligations relating to casino regulation.

Victoria

In its 2002 NCP assessment, the Council assessed Victoria as having met its CPA obligations in relation to the *Casino Control Act 1991* and the *Casino (Management Agreement Act) 1993*. The Council accepted Victoria's position that the compensation required to remove the exclusive licence would outweigh any benefits from such an action.

Queensland

Queensland's review of its casino legislation also cited the costs of compensating casino operators as the reason for not revoking their exclusive licences. In its 2002 NCP assessment, the Council assessed Queensland as having met its CPA obligations for the four Acts that establish an exclusive licence for each Queensland casino.

Queensland's *Casino Control Act 1982* provides the Government with the power to grant licences for the operation of casinos in Queensland. This Act is being reviewed as part of Queensland's omnibus review of its gambling legislation. A draft review published in March 2003 supported the power of the Government to grant licences, citing (1) the licensees' contribution to the development of tourism facilities as a condition of their licence and (2) the need to control gambling opportunities. The Government is considering its response to the draft report.

The Council accepts the general principle of casino licensing, although the terms and conditions of licences have frequently created competition concerns. The Council assesses Queensland as complying with its CPA obligations relating to casino regulation.

Western Australia

Western Australia's *Gaming Commission Act 1987* requires a licence for the operation of a casino. The review of this Act recommended retaining this

requirement. The exclusivity period for the Burswood Casino licence has expired, but the legislation giving effect to the licence (the *Casino Control Act 1984* and the *Casino [Burswood Island] Agreement Act 1985*) still provides considerable protection by restricting casino games to licensed casinos and requiring that persons wishing to establish another casino within 100 kilometres must (among other requirements) house the casino in a complex of similar magnitude to that of the existing casino. Western Australia's review recommended that the Government consider negotiating with the Burswood Casino operators to remove or relax remaining restrictions, but only after undertaking a full public benefit assessment. The Government reached agreement with Burswood Nominees Pty Ltd and Cabinet gave approval for drafting of the necessary legislative amendments to the Casino (Burswood Island) Agreement Act, which include:

- removing the 10 per cent individual shareholder limitation in September 2003; and

- accepting, in principle, a three-tier taxation system for a 10-year period, under which the rate varies according to whether the format is video gaming machines, table games or international business.

These amendments, however, do not address the remaining competition restrictions, although the key restriction — the exclusive licence period— expired. Given that Western Australia did not complete its reform activity, the Council assesses Western Australia as not having complied with its CPA obligations in relation to casino licensing.

South Australia

South Australia has reviewed its gambling legislation (including the *Casino Act 1997*, which stipulates that only one casino licence be issued) in the light of the 3 November 2000 CoAG meeting and the 1999 Productivity Commission inquiry. The review was finalised in March 2003. The Government agreed with the review finding that advantages of probity regulation and harm minimisation arise from having only one casino licence, and noted that financial losses would arise from revoking the exclusive licence. The Government undertook to review the case for exclusivity as its expiry nears, accounting for the financial benefit to the community from exclusivity and the regulatory options available to ensure a responsible gaming environment.

Although the Productivity Commission found that exclusive licences may contribute to harm minimisation via reduced access to table games, the inquiry cast doubt on the link between exclusive licences and enhanced probity. However, the Council accepts that South Australia would incur significant costs from revoking the exclusive casino licence before the expiry date. The Council assesses South Australia as having met its CPA clause 5 obligations relating to casino regulation.

Tasmania

In its 2001 NCP assessment, the Council assessed Tasmania as complying with its CPA obligations, following its repeal of the *Casino Company Control Act 1973*, which restricted the ownership of the Wrest Point casino to Australian citizens.

Other controls on casino operations arise from provisions in the *Gaming Control Act 1993*. The review of this Act did not consider the Deed between the Government and Federal Hotels, which provides for an exclusive licence for Federal Hotels to operate casinos and gaming machines in Tasmania until 2008.

In correspondence dated 13 December 2001, Tasmania advised the Council that:

- a compensation claim would arise from revoking the exclusive licence; and
- it did not intend extending or renewing the licence with Federal Hotels beyond its expiry date.

In response, the Council indicated that it:

- accepted Tasmania's argument that the likely compensation claim from early termination of the exclusive licence may exceed any benefits from ending the licence before its expiry date; and
- sought a clear undertaking that Tasmania would not consider any exclusivity arrangements beyond 2008 with any potential operator.

On 6 May 2003, the Tasmanian Treasurer advised the Council that Tasmania would introduce legislation granting Federal Hotels an exclusive 15 year licence to conduct casino and gaming machine operations. The analysis presented in the regulatory impact statement accompanying the proposed legislation is largely concerned with gaming machines, stating that its arguments are appropriate to gaming machines in both casinos and other licensed venues. The Council's discussion of the regulatory impact statement can be found in the section on gaming machines later in this chapter.

Although the Council considers that an exclusive casino licence can provide a limited public benefit by restricting access to table games, the cost of the restriction is difficult to determine, depending on whether additional casinos would seek to operate in Tasmania in the absence of exclusivity. The Council has already indicated its acceptance of Tasmania's position that the likely compensation claim from termination of the exclusive licence before 2008 may exceed any benefits from ending the licence before this date. However, the Council would consider Tasmania as failing to meet its CPA obligations if the proposed extension to the exclusive licence proceeds. The Council considers that an extension of the exclusive licence would have the effect of entrenching a monopoly provider for a lengthy period without the support of a

compelling public interest case. The Council assesses Tasmania as not having met its CPA obligations in relation to casino legislation.

The ACT

The ACT's review of the *Casino Control Act 1998* found no public interest justification for the exclusive licence held by Casino Canberra. Like several other jurisdictions, however, it considered that compensation for early revocation would be prohibitive. The review recommended that the Government signal that it will not extend the licence. The Government since stated that it will not extend the exclusivity of the current Casino Canberra licence beyond the expiry date, so the Council considers that the ACT has met its CPA clause 5 obligations relating to casino regulation.

The Northern Territory

The Northern Territory is reviewing casino restrictions in its *Gaming Machine Act* and Regulations, and *Gaming Control Act*. A full public review of these Acts has been completed and is due to be considered by the Government in September/October 2003. Because the Northern Territory did not complete its review and reform activity, the Council assesses it as not having met its CPA obligations in relation to casino regulation. The Council notes, however, that the Northern Territory has multiple casino venues and previously encouraged casino operators to relinquish early their exclusive licences. The Council thus considers that the Northern Territory has demonstrated a commitment to reform.

Table 9.5: Review and reform of legislation regulating casinos

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Casino Control Act 1992*	Exclusive licence	Review was completed in 1998. An updated review was completed in 2002. It recommended that the Government consider liberalising the casino gaming market near the 2007 exclusivity expiry date.		Review and reform incomplete
Victoria	*Casino (Management Agreement) Act 1993* *Casino Control Act 1991*	Exclusive licence	NCP review did not proceed because preliminary investigations indicated that the compensation required to remove the exclusive licence would outweigh any benefits from revoking the licence.		Meets CPA obligations (June 2002)
Queensland	*Jupiters Casino Agreement Act 1983* *Breakwater Island Casino Agreement Act 1984* *Brisbane Casino Agreement Act 1992* *Cairns Casino Agreement Act 1993*	Exclusive licences	Review was completed in 1998.	Provisions were retained.	Meets CPA obligations (June 2002)

(*continued*)

Table 9.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Casino Control Act 1982*	Licensing	Act was included in an omnibus public benefit test review of gambling legislation. A draft review report was released for public consultation in April 2003. The Government's response is expected later in 2003.		Meets CPA obligations (June 2003)
Western Australia	*Casino Control Act 1984* *Casino (Burswood Island) Agreement Act 1985* Casino Control (Burswood Island) (Licensing of Employees) Regulations 1985	Licensing, market conduct, operations	Review was completed in 1998.	Exclusive licence expired and was not renewed. Other barriers to entry that are not in the public interest were removed. The Government is negotiating remaining entry restrictions with the casino operator.	Review and reform incomplete
South Australia	*Casino Act 1997*	Exclusive licence	Omnibus review was completed in 2003. It found that removing exclusive licences would involve significant compensation costs and the potential cost of additional problem gambling.	Government accepted the review finding and undertook to review the case for exclusive licences towards the end of the exclusivity period.	Meets CPA obligations (June 2003)
Tasmania	*Casino Company Control Act 1973*	Ownership	Minor review was completed.	Act was repealed.	Meets CPA obligations (June 2001)

(*continued*)

Table 9.5 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Gaming Control Act 1993*	Deed provision of an exclusive casino licence	No review of the 1993 deed. A proposed extension of the exclusive licence was accompanied by a regulatory impact statement which argued that the extension was in the public interest because it prevented an increase in gaming machine numbers in venues where more intensive machine use is likely.	Parliament is yet to pass a Bill to implement the extension of the exclusive licence.	Review and reform incomplete
ACT	*Casino Control Act 1988* *Games, Wagers and Betting-houses Act 1901* *Gaming and Betting Act 1906*	Licensing, conduct	Reviewed was completed in 1998 as part of a broader review of ACT gambling legislation. It recommended no change to the *Games, Wagers and Betting-houses Act 1901* and the *Gaming and Betting Act 1906*.	The Government decided not to extend the casino licence beyond its expiry date.	Meets CPA obligations (June 2003)
Northern Territory	*Gaming Control Act* and Regulations *Gaming Machine Act* and Regulations	Licensing, operations, conduct	Review was completed and is due to be considered by the Government shortly.		Review and reform incomplete

TABs

TAB legislation in every jurisdiction provides an exclusive licence to operate off-course totalisator betting.[3] All jurisdictions reviewed their TAB legislation, some in the context of TAB privatisation. Reviews generally found that the exclusive licence is required to safeguard the totalisator prize pool and, consequently, the funding provided to the racing industry.[4] The findings of the Productivity Commission inquiry cast some doubt on this claim. The Productivity Commission argued that granting the exclusive licence, while providing a means of raising funds (which are then made available to the racing industry), is not guaranteed to result in the 'right' amount of funds or the 'right' number of races. Further, it considered that the exclusive licence would offer little protection to a TAB (and therefore to racing industry funding) if alternative providers offered home gambling and sports betting services. The Productivity Commission found that while there is a case for government intervention in response to market failure in the racing industry,[5] TAB exclusivity is not necessary to ensure adequate funding for the industry.

While the Council noted earlier that exclusive casino licences can contribute to harm minimisation by restricting access to a particular form of gambling (table games), exclusive TAB licences do not limit access to totalisator gambling and cannot be justified on this basis.

Given the Productivity Commission findings, the Council stated in its 2002 assessment that governments that retain exclusive TAB licensing arrangements to ensure adequate funding of the racing industry have not addressed their obligations under the CPA clause 5. The Council conceded, however, that the cost of compensating some TABs for revoking their exclusive licence is likely to be high and may be a reason for retaining exclusive licences until their expiry.

The review outcomes in Western Australia and the ACT, along with the New South Wales Government's suggestion that it may consider multiple wagering licences after its exclusive licence expires in 2012, indicate scope for removing exclusive TAB licences in those jurisdictions.

Governments' concern about shoring up prize pools, along with the cross-border questions (including revenue and taxation sharing arrangements)

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

4 In this context, the 'racing industry' refers to thoroughbred, harness and greyhound racing.

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

raised by New South Wales and the ACT suggests that an interjurisdictional approach may be needed to consider the future of TAB licences. The ACT expressed its willingness to consider non-exclusive TAB licensing arrangements further and to participate in an interjurisdictional forum to examine the matter. The ACT was also instrumental in the establishment of a national task force to examine issues of cross-border betting by race and sports bookmakers, and it would prefer to defer any examination of TAB licensing issues until the task force findings are known.

While acknowledging that exclusive wagering licences are unlikely to be removed during the life of the NCP legislation review and reform program, and that arguments such as the cost of compensating TABs for the loss of their exclusive licences may be relevant, the Council looked for governments to consider this issue further through an intergovernmental process such as the Cross-Border Betting Task Force or the Racing Ministers' Conference. Table 9.6 summarises jurisdictions progress in reviewing and reforming their TAB legislation.

New South Wales

The review of the *Totalizator Act 1997*[6] argued that the New South Wales TAB (TAB Limited) exclusive betting licence ensures at least two totalisators operate and compete in Australia, with TAB Limited acting as a counter to the large, privatised Victorian TAB. The New South Wales report noted, however, that both these totalisators face competition, not just from each other but also from interstate and international wagering operators. This appears to cast doubt on the validity of the argument for at least two totalisators. If the market is defined narrowly (as totalisator betting), then competition would be lessened by having only one service provider. If totalisator betting is part of a larger gambling services market in which close substitutes for totalisator betting exist, then the need to ensure the existence of at least two totalisators is less crucial.

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

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

[6] The Act that repealed and replaced the *Totalizator Act 1916* and the *Totalizator (Off Course Betting) Act 1964*.

The Council accepts New South Wales position on the high cost of revoking TAB Limited's exclusive betting licence and assesses New South Wales as having complied with its CPA obligations in regard to the Totalizator Act.

Victoria

Victoria's privatised TAB, TABCORP, has an exclusive 18-year licence for off-course pari-mutuel betting under the *Gaming and Betting Act 1994*. Victoria reviewed this licence as part of its NCP review of racing and betting. Although not clearly stated in the review report as a net benefit, the exclusive licence is considered to:

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

Victoria's rationale for TABCORP's exclusive licence is similar to that of New South Wales for TAB Limited's exclusive licence: that is, the exclusive licence is necessary to generate adequate funds for the racing industry. The 1999 Productivity Commission inquiry found that government-enforced exclusivity is not needed to achieve a large betting pool, and did not support the Victorian view. Carrying the Victorian and New South Wales argument to a logical conclusion would mean that a national betting pool is preferable to separate State-based pools because the national pool would be larger and would generate a larger prize pool. While it is likely that the costs of buying back the licence outweigh the benefits, Victoria's review did not consider the case for revoking the exclusive licence. However, in subsequent correspondence with the Council, Victoria has drawn attention to the substantial compensation that would be required if the TABCORP licence was revoked. The Council accepts that this compensation is likely to outweigh the benefits from revoking exclusivity and thus assesses Victoria as having met its CPA obligations in relation to the Gaming and Betting Act.

Queensland

In its 2001 NCP assessment, the Council assessed Queensland as complying with its CPA obligations in relation to the *Racing and Betting Act 1980*. Queensland replaced the TAB-related provisions in the Racing and Gaming Act with the *Wagering Act 1998*, including provisions for granting an exclusive licence to Queensland's TAB.

Queensland's omnibus review of gambling regulation included a review of the Wagering Act. The draft review report was released for public consultation in April 2003 and argued that the exclusive licence is necessary to ensure the

viability of the State's racing industry and that its removal would signal that the Government is encouraging a proliferation of gambling opportunities. The Government also faces significant compensation costs if the exclusivity were to be revoked.

Given that Queensland did not complete its review and reform activity, the Council assesses Queensland as not having complied with its CPA obligations in relation to the Wagering Act.

Western Australia

Western Australia's review of its TAB legislation (the *Betting Control Act 1954* and the *Totalisator Agency Board Betting Act 1960*) recommended that the legislation should allow the Minister to grant additional off-course totalisator licences. Western Australia considered this recommendation in the context of a review of the governance structure of its racing industry. It decided to retain an exclusive licence to conduct off-course totalisator betting for the newly formed racing industry governing body, Racing and Wagering Western Australia, to give the organisation time to establish and to consolidate its racing and wagering activities before possibly facing competition.

Western Australia's decision to reject its review recommendation and continue its ban on the licensing of additional off-course totalisators represents a missed opportunity for reform. Western Australia does not face the prospect of having to compensate the licence holder for revoking exclusivity. Western Australia's reasons for maintaining exclusivity do not constitute a sufficient public benefit argument to justify the State's indefinite continuation of exclusivity. The Council thus assesses Western Australia as not having met its CPA obligations in relation to TAB licensing.

South Australia

South Australia sold its TAB in August 2001. It considered the exclusive TAB licence, granted under the *Authorised Betting Operations Act 2000*, as part of its 2003 omnibus review of its gambling legislation. The Government agreed with the review findings that a financial loss to the community would arise from revoking the exclusive licence and that advantages of probity regulation and harm minimisation arise from having one provider. The Government undertook to review the case for exclusivity nearer to the licence's expiry, accounting for the financial benefit available to the community from granting exclusivity and the regulatory options available to ensure a responsible gaming environment. The Council is not convinced that probity regulation and harm minimisation are enhanced by the exclusive licence. However, the Council accepts that the cost of revoking the licence would be likely to outweigh the benefits, and thus assesses South Australia as having met its CPA obligations in relation to TAB licensing.

Tasmania

In Tasmania, the *Racing Regulation Act 1952* regulates the operation of totalisator betting and the relationship TOTE Tasmania (formerly the TAB) with the racing industry. The Tasmanian Government agreed to prepare legislation that will transfer the regulation of TOTE Tasmania from the Racing Regulation Act to the *Gaming Control Act 1993* and to assess the proposed new legislation under the State's gatekeeper provisions for new legislation (see chapter 13).

TOTE Tasmania has a monopoly in the provision of wagering services from approved locations (over-the counter) in Tasmania. Apart from totalisator wagering, this monopoly will end on 31 December 2003. From 2004, a Tasmanian gaming licence holder with fixed odds or sports betting endorsements will be able to provide services either over-the-counter or at an approved sporting event. However, the new legislation will retain TOTE Tasmania's monopoly on the provision of totalisator wagering services. A regulatory impact statement will be prepared before the legislation is introduced, which is expected to be in the spring 2003 session of Parliament. Because Tasmania did not complete its review and reform activity, the Council assesses it as not having complied with its CPA obligations with relation to totalisator licensing.

The ACT

The *Betting (ACTTAB Limited) Act 1964* and the *Betting (Corporatisation) (Consequential Provisions) Act 1996* govern the operations of the ACT's TAB and provide for an exclusive licence. The review of this legislation recommended that the Government allow new licences for TABs operating wholly within the ACT, but not allow interstate totalisators until systems are in place to extract racing turnover taxes (and any other turnover taxes and licences) from wagers that originate in the ACT.

The Government announced partial support for the review recommendations, noting that care needs to be exercised in assessing the social impacts of opening up the totalisator market. Further, the Government noted that the loss of TAB revenue from clients who do not live in the ACT has implications for ACTTAB, the Government and the industry, and needs to be addressed. The ACT expressed its willingness to consider further the issue of non-exclusive TAB licensing arrangements and to participate in an interjurisdictional forum on the matter. The ACT would prefer to defer any examination of TAB licensing issues until the findings of the National Cross-Border Betting Task Force are known.

Because the ACT did not complete its reform activity, the Council assesses it as not having complied with its CPA obligations in relation to TAB regulation.

Northern Territory

The Northern Territory Government reviewed the *Totalisator Licensing and Regulation Act* and the *Sale of NT TAB Act*. [7] The Government accepted the review recommendations and advised that no legislative change is necessary. The Northern Territory undertook to supply the Council with a copy of the review and the Government's response in mid-2003, when it anticipated having completed negotiations regarding the sale of the NT TAB

The Council assesses the Northern Territory as not having complied with its CPA obligations in relation to TAB regulation. At the time of 2003 NCP assessment, the Council had not received the Northern Territory's public benefit arguments for retaining restrictions. If these arguments are robust, then the Northern Territory would comply with its CPA obligations in this area.

[7] These Acts repealed and replaced the *Totalisator Administration and Betting Act*.

Table 9.6: Review and reform of TAB legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Totalizator Act 1916* *Totalizator (Off-Course Betting) Act 1964*	Market conduct, rules, establishment of the TAB	Review was not required.	Acts were repealed and replaced by the *Totalizator Act 1997*.	Meets CPA obligations (June 2001)
	Totalizator Act 1997 (and amendments)	Licensing, exclusive licences	New legislation CPA clause 5(5) applies. Review of some restrictions and exclusive licences found a net public benefit.	The Government argued that the cost of breaking the exclusive licence agreement (which does not expire until 2012) would more than outweigh any benefits. It indicated that it may consider introducing multiple wagering licences once the exclusive licence expires and that it will continue to work with other jurisdictions minimise any adverse cross-border impacts.	Meets CPA obligations (June 2003)
Victoria	*Gaming and Betting Act 1994* as it relates to betting	Licensing, legislated monopoly, market conduct, operations, funding for the racing industry	Review was completed in 1998. It recommended retaining the TABCORP monopoly to ensure an adequate prize pool size in Victoria to generate adequate funds for the racing industry. Victoria has indicated that substantial compensation would be required if the TABCORP licence was revoked.	The Government supported the review findings.	Meets CPA obligations (June 2003)
Queensland	*Racing and Betting Act 1980* and associated rules and Regulations (as they relate to the Queensland TAB)	Exclusive licence, market conduct, operations		The TAB-related provisions of the Act were replaced by the new *Wagering Act 1998*, which is to be reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001)

(*continued*)

Table 9.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland (continued)	*Wagering Act 1998*	Exclusive TAB licence	Omnibus public benefit test review is under way. A draft review report was released for public consultation in April 2003. The Government's response is expected later in 2003.		Review and reform incomplete
Western Australia	*Betting Control Act 1954* *Totalisator Agency Board Betting Act 1960*	Exclusive TAB licence	Review was completed in 1998. It recommended relaxing restrictions on the operation of totalisators other than the TAB.	The Government retained the prohibition on the licensing of additional off-course totalisators in the Bills that restructure its racing industry.	Does not meet CPA obligations (June 2003)
South Australia	*Authorised Betting Operations Act 2000*	Exclusive TAB licence	Omnibus review is complete. It finds that removal of the TAB exclusive licences would involve significant compensation costs and has the potential cost of additional problem gambling.	The Government accepted that revoking exclusive licences would not be in the public interest.	Meets CPA obligations (June 2003)
Tasmania	*Racing and Gaming Act 1952* (except as it relates to minor gaming) which was renamed the *Racing Regulation Act 1952*	TAB Licensing and operations	The Tasmanian Government has agreed to the preparation of legislation that will transfer the regulation of TOTE Tasmania from the *Racing Regulation Act 1952* to the *Gaming Control Act 1993*. The proposed new legislation will be assessed in accordance with Tasmania's gatekeeper provisions.	The Government indicated that other providers of fixed odds or sports betting endorsements will be able to operate from 2004, either over-the-counter or at an approved sporting event. However, new legislation will retain the TOTE Tasmania monopoly on the provision of totalisator wagering services.	Review and reform incomplete

(*continued*)

Table 9.6 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Betting (ACTTAB Limited) Act 1964* *Betting (Corporatisation) (Consequential Provisions) Act 1996*		Review was completed in 1999. It recommended that the Government allow new licences for TABs operating wholly within the ACT, but not allow interstate totalisators until systems are in place to extract racing turnover taxes (and any other turnover taxes and licences) from wagers that originate in the ACT.	The ACT expressed its willingness to consider further the issue of non-exclusive TAB licensing arrangements and to participate in an interjurisdictional forum on the matter. The ACT was instrumental in the establishment of a national task force to examine issues dealing with cross border betting by race and sports bookmakers and would prefer to defer any examination of TAB licensing issues until the findings of the task force are known.	Review and reform incomplete
Northern Territory	*Totalisator Administration and Betting Act*	Exclusive licence	Review was not required.	Act was repealed and replaced with the *Totalisator Licensing and Regulation Act* and the *Sale of NT TAB Act*.	Meets CPA obligations (June 2001)
	Totalisator Licensing and Regulation Act *Sale of NT TAB Act*	Licensing	Review was completed in 2001. The review and the Government's response will be available following the completion of preliminary measures necessary to implement the findings of the review.	The Government approved the review recommendations in February 2002. No legislative changes are necessary.	Review and reform incomplete

Lotteries

Like TAB legislation, lotteries legislation is characterised by exclusive licences. Governments usually justify exclusive lottery licences on the basis that they are necessary to ensure a large enough prize pool to make the lottery sufficiently attractive. The Productivity Commission inquiry did not support this argument, concluding that governments do not need to legislate exclusive arrangements to achieve a large prize pool. Furthermore, as is the case with exclusive TAB licences, exclusive lottery licences do not have the virtue of limiting access to lottery gambling opportunities.

Most governments reviewed their legislation regulating lotteries, sometimes as part of broad reviews of all their gambling legislation. Some jurisdictions introduced or are considering arrangements providing for more than one lottery provider. Following its review and reform, Tasmania has the potential for competition to occur between suppliers of over-the-counter lottery services. In its 2002 NCP assessment, the Council assessed Tasmania as having met its CPA obligations in this area. Table 9.7 summarises jurisdictions progress in reviewing and reforming their lotteries legislation.

New South Wales

In New South Wales, the *Public Lotteries Act 1996*[8] governs lotteries and other games such as lotto and soccer pools. This Act provides for the licensing of operators of commercial lotteries and for the regulation of such games. When NSW Lotteries was corporatised under the *NSW Lotteries Corporatisation Act 1996*, it was granted an exclusive licence to conduct seven lottery games until 2007, after which the licences become contestable. New South Wales conducted statutory five-year reviews of these Acts. The review reports were tabled in Parliament in December 2002 and a Government decision on the competition issues raised in the reports is anticipated in mid-2003 following further public consultation.

The reviews recognised the potential costs arising out of exclusivity arrangements (such as limits on the ability of Government to transfer a licence to another party), but recommended retaining the exclusive licence until the legislated expiry date. It considered repealing the provisions before this date would have a net public cost. It found that NSW Lotteries has made long-term decisions based on the exclusive period specified in the licences, and that to reduce the exclusivity period might undermine the corporation's financial viability. The review also noted that no other jurisdiction appears likely to make their licences contestable before this date, so that the lifting of the restrictions would be a significant competitive disadvantage to New South Wales and result in a transfer of lottery activity and revenue to other States.

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8 The Public Lotteries Act replaces the *Lotto Act 1979,* the *NSW Lotteries Act 1990* and the *Soccer Football Pools Act 1975.*

The review also considered that an immediate deregulation of current arrangements would be contrary to the Government policy of restricting the growth of new gambling opportunities in New South Wales.

Other competition issues considered by the review included the less stringent harm minimisation requirements imposed on lottery gaming compared with other gaming, such as poker machines. The review found that the differing approaches are justified on the basis that other gaming poses substantially greater risks of harm — a finding that the Productivity Commission inquiry supported.

Because New South Wales did not complete its reform activity, the Council assesses it as not having met its CPA obligations in relation to lotteries legislation.

Victoria

After reviewing the *Tattersall Consultations Act 1958* Victoria repealed this Act and replaced it with the *Public Lotteries Act 2000*. The new legislation allows for multiple lottery licences from 2004, when the Tattersall's exclusive licence expires. Victoria has committed to actively seeking the cooperation of New South Wales in facilitating a national market once the exclusive licence in New South Wales lapses in 2007. It also stated that it intends to issue public lottery licences after July 2007 through a transparent, contestable, competitive tender. In the 2002 NCP assessment, the Council considered that Victoria's public interest arguments justified transitional reform implementation. It thus assessed Victoria as meeting its CPA obligations in relation to lottery legislation

In 2003 Victoria extended the Tattersall's exclusive licence until 2007. The extended licence was granted on the basis that Tattersall's agrees with the Gaming Minister on a format that discloses the costs of operating its gaming related licences in Victoria, so as to create greater transparency in financial reporting. Victoria remains concerned that any move to increase licence numbers is likely to provide limited economic benefits for the State while every other State has a sole licensed operator. Victoria also pointed out that larger prize pools and larger jackpots resulting from a single seller increase player interest and ticket sales. The Council considers that these considerations do not constitute a sufficient public benefit argument for extending exclusivity. While the Council recognises that Victoria established the conditions for multiple provision of lottery services and the opportunity for a national market after 2007, it now assesses Victoria as not having complied with its CPA obligations in relation to lotteries.

Queensland

Following its initial NCP review of the *Lotteries Act 1994*, the Queensland Government revoked the statutory monopoly provisions applying to the Golden Casket Corporation and replaced them with a limited duration

exclusive licence, to allow the corporation to adjust to the commercial environment following its corporatisation. Queensland's omnibus review of gambling regulation included a review of the new legislation, the *Lotteries Act 1997*. The draft report of the omnibus review was released for public consultation in April 2003. It argues that the exclusive licence was necessary to facilitate the extensive infrastructure required to deliver the product and to ensure the continued short-term viability of existing lotteries in Queensland. In addition, the costs to the Government of breaching the licence, along with the proliferation of gambling that may arise from the granting of additional licences, would pose an appreciable cost to the community. The review recommended retaining the exclusive licence until its expiry.

While the Government has not completed reforms arising from the omnibus gambling review, the Council accepts that for Queensland to revoke its exclusive lottery licence before its expiry date would involve significant cost to the community. The Council thus assesses Queensland as having met its CPA obligations in relation to lotteries legislation.

Western Australia

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

Western Australia also reviewed the *Lotteries Commission Act 1990* and associated rules. This Act provides for the powers and rights of the Lotteries Commission, including: allowing the commission to enter into agreements with other State lotteries agencies to jointly conduct lotto and soccer pools; allowing it to use trading names and symbols; allowing it to obtain permits directly from the Minister; making it an offence for a person, without the commission's approval, to derive a fee or reward for promoting or forming a syndicate to purchase a ticket in a game conducted by the commission; and allowing the commission to enjoy the status, immunities and privileges of the Crown. The review recommended retaining the restrictions in the Act in the public interest. It is not clear whether the current powers of the Lotteries Commission are consistent with the more competitive lotteries market recommended by the review of the Gaming Commission Act.

Because Western Australia did not complete its reform activity, the Council assesses it as not having complied with its CPA obligations in relation to lotteries.

South Australia

South Australia reviewed lottery legislation as part of its omnibus review of gambling legislation. The review found that, while the State-operated Lotteries Commission does not have exclusivity in a technical sense, it enjoys market dominance that is not dissimilar to exclusivity. The review raised the following arguments in favour of maintaining the current arrangements.

- The Lotteries Commission has a wide distribution network. Increased competition may lead sellers to focus on profitable areas to the detriment of regional South Australia.

- Exclusivity provides for the highest probity standards. In addition, the Independent Gambling Authority must approve Lotteries Commission codes of practice.

- Exclusivity maximises the revenue available to the community as owner of the exclusive licence.

- Lottery entry costs are lower in South Australia than in the ACT, where there is competition between two suppliers of lottery products.

However, the review provided little detailed analysis to support its conclusions.

- There is no evidence to suggest that multiple sellers of lottery products would not service regional South Australia.

- Sellers other than the Lotteries Commission can be subject to probity checks at little additional cost.

- While the cost of a lotto ticket may be slightly less in South Australia than the ACT, the review did not consider the likely return via prize money.

- No evidence was provided to support the contention that current arrangements maximise community revenue.

The Government accepted the review recommendation to maintain exclusivity, stating that the availability and terms of lottery products through the Lotteries Commission are adequate and that the community obtains a financial benefit from the current arrangements.

The Council assesses South Australia as not having met its CPA obligations in relation to lotteries legislation because it considers that the Government's public benefit arguments do not support indefinitely retaining exclusivity for the Lotteries Commission.

The ACT

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

The restrictions in the ACT legislation are aimed at probity and do not limit the number of lottery providers. The Council thus assesses the ACT as having complied with its CPA obligations in relation to lottery legislation.

The Northern Territory

The Northern Territory completed a review of *Gaming Control Act*, which regulates the Territory's lotteries. A Government response to the review was anticipated before 30 June 2003.

Given that the Northern Territory did not complete review and reform activity, the Council assesses it as not having complied with its CPA obligations in relation to lottery legislation.

Table 9.7: Review and reform of lotteries legislation

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Lotto Act 1979* *NSW Lotteries Act 1990* *Soccer Football Pools Act 1975*		Review was not required.	Acts were repealed and replaced by the *NSW Lotteries Corporatisation Act 1996* and the *Public Lotteries Act 1996.*	Meets CPA obligations (June 2001)
	NSW Lotteries Corporatisation Act 1996 *Public Lotteries Act 1996.*	Exclusive licensing	Statutory reviews incorporating an assessment of NCP issues were completed in December 2002. The reviews considered that there would be a net public cost in repealing the exclusive licence provisions before their expiry date. To reduce the period might undermine the licensee's financial viability. Also, lifting the restrictions in the absence of a national market would pose a significant competitive disadvantage to New South Wales and result in a transfer of lottery gaming activity and revenue to other States.	A decision on the competition issues raised in the review reports is anticipated later in 2003, following further public consultation.	Review and reform incomplete (June 2003)

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria	*Tattersall Consultations Act 1958* *Public Lotteries Act 2000*	Legislated monopoly	Review was completed in 1997.	*Public Lotteries Act 2000* repealed this Act. New Act allows for multiple suppliers, but Victoria has extended the exclusive Tattersalls licence until 2007.	Does not comply (June 2003)
Queensland	*Lotteries Act 1994*	Exclusive licence	Review completed.	Statutory monopoly of Golden Casket Corporation was replaced with a limited-duration exclusive licence. Act was repealed and replaced with the *Lotteries Act 1997*, which was reviewed as part of the omnibus review of gambling in Queensland.	Meets CPA obligations (June 2001)
	Lotteries Act 1997	Exclusive licence	Act was reviewed as part of the omnibus review of gambling in Queensland. A draft review report was released for public consultation in April 2003. The Government's response is expected later in 2003. The draft report found that the exclusive licence is necessary to ensure the viability of existing Queensland lotteries and should be retained until its expiry date. The Council accepts the public interest evidence.	No reform is necessary.	Meets CPA obligations (June 2003)

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia	Instant lottery and lotto rules *Lotteries Commission Act 1990*	Market conduct, operations, licensing	Review was completed. It recommended retaining restrictions.	The Government is considering its response.	Review and reform incomplete
Western Australia (continued)	*Gaming Commission Act 1987*	Lottery licensing	Review was completed in 1998. It recommended removing or reducing lotteries restrictions, including: allowing for the licensing of suppliers of State lottery products by State agreement; making lawful the lotteries conducted by organisations that are the subject of such an agreement; allowing for the licensing of professional fundraisers; removing the definition of 'foreign lottery' from the legislation; and making related amendments.	The Government is considering its response. Amendments will affect the *Lotteries Commission Act 1990*.	Review and reform incomplete

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
South Australia	*State Lotteries Act 1966*	Exclusive licence	Omnibus review was completed in 2003. It recommended retaining the effective exclusivity of the Lotteries Commission's licence because exclusivity • ensures a wide distribution network that includes regional South Australia; • provides for the highest probity standards; • maximises the revenue available to the community; and • provides low lottery entry costs compared with those in the ACT where there is competition between lottery suppliers.	The Government accepted that revoking exclusive licences would not be in the public interest.	Does not comply (June 2003)
Tasmania	*Gaming Control Act 1993* (as applying to lotteries)	Licensing	Review was completed.	Amendments to the Act removed Tattersall's exclusive lottery licence in Tasmania from 2002 and further amendments will permit the sale of other lottery tickets.	Meets CPA obligations (June 2002)

(*continued*)

Table 9.7 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Lotteries Act 1964* *Pool Betting Act 1964* *Unlawful Games Act 1984*		Review was completed in 1998. It found that the current duopoly is no barrier to new entrants and recommended no change to the legislation.	The Government accepted the recommendation.	Meets CPA obligations (June 2003)
Northern Territory	*Gaming Control Act* and regulations	Licensing	Review was completed the review report is under consideration by the Government.		Review and reform incomplete

Racing and betting

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

All jurisdictions except Tasmania completed reviews of all their racing and betting legislation. Tasmania restructured its racing industry and is drafting new legislation, which it will assess via its legislation gatekeeping process (see chapter 13). Table 9.8 summarises jurisdictions' progress in reviewing and reforming their racing and betting legislation.

New South Wales

The New South Wales review of its racing and betting legislation (the *Racing Administration Act 1995*, the *Greyhound Racing Authority Act 1985* the *Harness Racing Act 1977*, the *Bookmakers Taxation Act 1917* and the *Thoroughbred Racing Board Act 1996*) recommended only minor changes to the State's racing and betting legislation. The Government accepted the review recommendation to allow bookmakers to operate as proprietary companies. The review also recommended retaining other restrictions, such as the Racing Administration Act's requirement of a A$200 minimum phone bet for bookmakers and its prohibition on interstate betting providers advertising in New South Wales. The minimum bet level was reduced to A$100 from 25 February 2003 and only applies to metropolitan gallops meetings.

In the Council's 2002 NCP assessment, it assessed New South Wales as having met its CPA obligations in relation to the *Sydney Turf Club Act 1943*, and the *Australian Jockey Club Act* 1873. The Council's 2002 NCP assessment report also contains a full discussion of the review, its recommendations and the Council's assessment that New South Wales had not met its CPA obligations in relation to the minimum bet levels and advertising restrictions contained in the Racing Administration Act. The Council assesses the remaining legislation as having complied with CPA obligations

Victoria

Victoria accepted all the recommendations of its racing industry review, except for expanding sports betting (because it considered more outlets would encourage problem gambling and lead to difficulties in ensuring probity). Reform was mostly complete at the time of the 2002 NCP assessment. After

consultation with the industry, the following progress took place during 2002-03.

- The phased reduction of minimum telephone bet limits, initiated in July 2001, continued. The limits will be reduced each year until totally abolished by July 2004.

- Amendments to relevant legislation were passed in 2002 allowing individually registered bookmakers to form partnerships subject to approval by the Bookmakers and Bookmakers' Clerks Registration Committee and the licensing requirements of the controlling bodies. The amendments also allow individually registered bookmakers to form restricted corporations in which only bookmakers may serve as directors or hold shares, and subject the operation of such corporations to approval by the committee and the licensing requirements of controlling bodies.

- The Government indicated its willingness to remove restrictions on 24-hour trading on race meetings for appropriately monitored telephone or Internet betting subject to the requirement that bookmakers operate from licensed racecourses. It varied trading hours to allow betting from 'scratching time' (usually 8.00 am) until three hours after the last race held at the venue on the day.

- The Government also indicated that it may approve internet betting once the racing industry and the bookmaking profession develop a whole-of-industry system and an associated body of rules that will safeguard the interests of punters and the racing industry.

The Council assesses Victoria as having complied with its CPA clause 5 obligations relating to the regulation of the racing and betting industry.

Queensland

The Queensland Government's review of its racing and betting legislation reported in 2000. The Government consequently implemented a number of reforms, including removing the A$200 minimum bet limit on bookmakers and removing of the prohibition on the entry of other racing codes into the regulated racing industry through the *Racing Act 2002*. Queensland undertook a further public benefit test on Racing Act restrictions which either were not covered in the earlier review or were inconsistent with the review's recommendations. All identified restrictions were assessed as being in the public interest. The Queensland Government now has no direct involvement in the State's racing industry other than to ensure probity and integrity.

The Council assesses Queensland as having complied with its CPA clause 5 obligations relating to the regulation of racing and betting.

Western Australia

Western Australia completed reviews of its racing industry legislation, then repealed the *Racing Restrictions Act 1927*, (which governed aspects of greyhound racing), and reformed the *Betting Control Act 1954*, the *Totalisator Agency Board Betting Act 1960*, the *Racing Restrictions Act 1917* and the *Western Australian Greyhound Racing Association Act 1981* via four Bills that were before the Parliament at 30 June 2003. The Bills propose to merge the principal club functions of the Western Australian Turf Club, the Western Australian Trotting Association and the Western Australian Greyhound Racing Authority, together with the off-course betting activities of the TAB, into a single controlling authority to be known as Racing and Wagering Western Australia.

While the Government is implementing many NCP review recommendations (including the establishment of a controlling authority for horse racing that is not thoroughbred racing or harness racing), two significant restrictions remain.

- The prohibition on the licensing of additional off-course totalisators, which will provide a competitive advantage to Racing and Wagering Western Australia (see section on TABs).

- Minimum bet levels for bets lodged via the telephone or Internet with Western Australian bookmakers will continue, although at reduced levels. From 1 April 2003, the minimum bet level has been reduced from A$200 to A$100 for metropolitan betting and A$100 to A$50 for country betting. From 1 July 2003, the minimum bet for Western Australian bookmakers has been reduced to $50 for metropolitan betting and there is no longer a minimum bet for country betting. Racing and Wagering Western Australia will further review the issue of minimum bets before July 2004. In announcing these changes, the Minister noted that they would bring Western Australia into line with Victoria, South Australia and Tasmania, and were part of a national plan to achieve consistency in all areas of bookmakers' operations.

Western Australia retained these restrictions, contrary to the recommendations of its review. The Government has argued that the reductions in minimum bet levels will bring the State into line with Victoria and South Australia. but Victoria is committed to removal of the minimum bet level in 2004 and South Australia's review recommended its removal. Queensland and the ACT have already removed the restriction.

The Council assesses Western Australia as complying with its CPA obligations in relation to the *Racing Restrictions Act 1927*. Given that Western Australia did not complete its reform activity, and that its proposed reforms retain two significant restrictions which are not supported by a public interest case, the Council assess the State as not complying with its CPA obligations in relation to the balance of its racing and betting legislation.

South Australia

South Australia repealed the *Racing Act 1976* and developed replacement legislation (the *Authorised Betting Operations Act 2000*) which is being considered as part of the State's omnibus gambling legislation review. The Act contains probity, harm minimisation and consumer protection restrictions that the review supported. In addition, the review recommended:

- removing of the exclusion of the major betting operations licensee from conducting fixed odds betting on races;
- removing of the restriction that bookmakers cannot be a body corporate;
- removing of minimum telephone bet limits for bookmakers; and
- clarifying of the criteria for issuing permits to bookmakers.

The phase out of minimum telephone bets is already embodied in the bookmakers' rules and will be fully implemented from 1 July 2004. The Government has recently released a discussion paper to racing industry stakeholders for consultation. The paper provides Government support for the other findings of the review and is seeking industry agreement to their adoption. South Australia has also legislated to allow proprietary racing, with the introduction of the *Racing (Proprietary Business Licensing) Act 2000*. This Act allows the conduct of race meetings (where betting is allowed) by bodies other than the racing codes.

Given that South Australia did not complete its reform activity, the Council assesses it as not having complied with its CPA obligations in relation to racing and betting legislation.

Tasmania

In its 2001 NCP assessment, the Council assessed Tasmania as complying with its CPA obligations in regard to the Tasmanian *Harness Racing Board Act 1976*. Following a restructure of its racing industry, Tasmania is preparing new racing and betting legislation to replace the *Racing Act 1983* and *the Racing Regulation Act 1952*. It intends to introduce the new legislation to Parliament later in 2003 and review the legislation via its gatekeeping process for new legislation (see chapter 13, volume 2). Because Tasmania did not complete its review and reform activity, the Council assesses it as not having complied with its CPA obligations in relation to its racing and betting legislation.

The ACT

The ACT reviewed its legislation regulating bookmakers in conjunction with the review of its TAB legislation. It repealed the *Bookmaker's Act 1985* and

replaced it with the *Race and Sports Bookmaking Act 2001*. The new Act implements reforms in line with the review recommendations, including:

- transferring responsibility for licensing bookmakers from the racing clubs to the ACT Gaming and Racing Commission;
- removing the limits on telephone betting; and
- removing the limits on the number of sports betting licences.

The only NCP issue that is not fully implemented concerns the sports bookmakers' security guarantee. An actuarial study to examine the size of the guarantee and the operational risk of each sport bookmaker is to commence soon, with an expected completion date of late 2003. In February 2003, the ACT Gambling and Racing Commission determined it would adopt an interim security guarantee of A$250 000 in assets because this is same figure used in New South Wales and the Northern Territory. The amount is deemed necessary to provide a sufficient safety net to cover winnings and thus ensure public confidence in sports bookmaking activities.

Although the ACT did not finalise the issue of bookmakers' guarantees, the proposed interim measure is sufficient to enable the Council to assess the ACT as having met its CPA obligations for racing and betting legislation.

The ACT also repealed the *Racecourses Act 1935*. Racing clubs are now regulated by the *Racing Act 1999*, which provides for other racing organisations to conduct races for the purpose of betting. In addition, the Act establishes the independent ACT Gambling and Racing Commission, thus removing direct Ministerial control of the industry. The ACT review of this legislation found that the regulation is necessary to maintain public confidence in the ACT racing industry (by ensuring product quality, protecting consumers and minimising the potential for criminal activity) and to minimise problem gambling and the associated social costs. In the 2002 NCP assessment, the Council assessed the ACT as having complied with its CPA obligations in relation to these Acts in the 2002 assessment.

The Northern Territory

The Northern Territory review of the *Racing and Betting Act* and Regulations and the *Unlawful Betting Act* is complete and is due to be considered by the Government in September/October 2003. Given that the Northern Territory did not complete its review and reform activity, the Council assesses it as not having complied with its CPA obligations in this area.

Table 9.8: Review and reform of legislation regulating racing and betting

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Racing Administration Act 1998* *Greyhound Racing Authority Act 1985* *Harness Racing Act 1977* *Bookmakers Taxation Act 1917* *Thoroughbred Racing Board Act 1996*	Market conduct, operations, licensing	Review was completed in 2001. It recommended retaining existing restrictions on the conduct of racing and betting, although relaxing on some operating structures for bookmakers.	The Government accepted the review recommendations.	Racing Administration Act – Does not meet CPA obligations (June 2002) *Greyhound Racing Authority Act 1985, Harness Racing Act 1977, Bookmakers Taxation Act 1917* and *Thoroughbred Racing Board Act 1996* – Meets CPA obligations (June 2003)
	Australian Jockey Club Act 1873	Lease arrangements for Crown land	Review was completed in 1999.	Restrictions in the Jockey Club Act (lease arrangements for Crown land) were found to be in the public interest and were retained because the potential cost of breaking the lease would outweigh the benefits. Review found that the Turf Club Act does not restrict competition.	Meets CPA obligations (June 2002)
	Sydney Turf Club Act 1943	Provisions that constitute and incorporate the Sydney Turf Club			

(*continued*)

Table 9.8 continued

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

(*continued*)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Queensland	*Racing and Betting Act 1980* and associated rules and Regulations (as they relate to bookmakers and the Queensland racing industry)	Licensing, market conduct, operations	Review was completed in 2000. The Government endorsed the review recommendations in November 2000. A further public benefit test on the new Racing Act found the remaining restrictions to be in the public interest by.	The *Racing Act 2002* enacted the review recommendations, including removing the majority of nonprobity-based restrictions on bookmakers (particularly those relating to minimum phone betting, betting type and recording of betting).	Meets CPA obligations (June 2003)
Western Australia	*Betting Control Act 1954* *Totalisator Agency Board Betting Act 1960*	Market conduct, operations, licensing	Review was completed in 1998. It recommended: • relaxing restrictions on the operation of totalisators other than by the TAB; • relaxing restrictions on bookmakers and their operations; • removing bet limits in the Regulations, leaving the racing clubs to set limits as they see fit; and • removing limits on minimum telephone bets with bookmakers; and • relaxing some restrictions on the operations of the TAB.	The *Betting Legislation Amendment Act 2001* implemented reforms to the operation of bookmakers. However, the Government retained minimum telephone bet limits (at reduced levels) until 2004. The Bills establishing the restructure of its racing industry (see Table 9.6).Western Australia retain the prohibition on the licensing of additional off-course totalisators.	Review and reform incomplete

(continued)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Racing Restrictions Act 1917*	Licensing, differential treatment	Review was completed in 1998. It recommended that: • provisions that establish centralised control of horse racing are in the public interest and should be retained; • the authority of the Western Australian Turf Club should be limited to thoroughbred racing; • alternative forms of horse racing be should be licensed where in the public interest; and • the establishment of a single independent regulator should be considered if the Western Australian Turf Club isshown to have improperly used its power as controlling authority to favour its own club activities over other clubs under its control.	The *Racing Restriction Acts 1917* and *1927* will be repealed and replaced by the Racing and Gambling Legislation Amendment and Repeal Bill 2003. In addition, three other reform Bills have been prepared: • the *Racing and Wagering Western Australia Bill 2003*; • the *Racing Restriction Bill 2003*; and • the *Racing and Wagering Western Australia Tax Bill 2003*. The Bills were before the Legislative Assembly at 30 June 2003. They implement a number of NCP reforms from reviews of the Racing Restriction Acts and the review of the *Western Australian Greyhound Racing Authority Act 1981*. The Bills establish Racing and Wagering Western Australia as the new governing body for all Western Australian racing. This body has an exclusive licence to conduct off course totalisator betting.	Does not meet CPA obligations (June 2003)
	Racing Restrictions Act 1927	Conduct of greyhound racing	Review was completed in 1999. It recommended repealing the Act.	Act was repealed and replaced by the Racing and Gambling Legislation Amendment and Repeal Bill 2003.	Meets CPA obligations (June 2003)

(*continued*)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Western Australia (continued)	*Western Australian Greyhound Racing Association Act 1981*	Registration, conduct	Review was completed. It recommended repealing provisions that limit the number of meetings that the Western Australian Greyhound Racing Authority may hold.	Removal of these provisions is included in the Bills before Parliament (see the *Racing Restrictions Act 1917*).	Review and reform incomplete
South Australia	*Racing Act 1976*	Barrier to entry, market conduct	Review was completed in 2000.	Act was repealed and replaced by the *Authorised Betting Operations Act 2000*.	Meets CPA obligations (June 2002)
	Authorised Betting Operations Act 2000	Licensing, market conduct	Omnibus review is complete. It recommended: • removing the exclusion of the major betting operations licensee from conducting fixed odds betting on races; • removing the restriction that bookmakers cannot be a body corporate; • removing minimum telephone bet limits for bookmakers; and • clarifying the criteria for issuing permits to bookmakers.	The Government will further consider these matters following consultation with the racing and wagering industry.	Review and reform incomplete
Tasmania	*Tasmanian Harness Racing Board Act 1976*	Registration, conduct	Review was completed.	Act was repealed and replaced by the *Racing Amendment Act 1997*.	Meets CPA obligations (June 2001)

(*continued*)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Tasmania (continued)	*Racing Act 1983* *Racing and Gaming Act 1952* (except as it relates to minor gaming) which has been replaced by the *Racing Regulation Act 1952*	Licensing, conduct, operations	Review was completed.	New racing legislation is being drafted following the restructure of the racing industry in 2000. The new legislation will be assessed under the gatekeeper provisions.	Review and reform incomplete

(*continued*)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
ACT	*Bookmakers Act 1985*		Review was completed in 1999.	The Government implemented reforms via the *Race and Sports Bookmaking Act* 2001 including: removing the requirement for racing club approval before granting bookmakers' licences; removing racing club-specific restrictions on bookmakers' licences; allowing an independent authority (the ACT Gambling and Racing Commission) to assess licence applications; removing limitations on phone betting limits; removing the requirement for sports bookmakers licence-holders (or agents licence-holders) to first obtain a standing bookmaker's licence; removing the limit on the number of sports betting licences granted; and allowing flexibility in the locations where betting offices can operate. After an actuarial examination due to be completed in late 2003, the ACT will complete reform relating the size of the betting security guarantee to the amount of risk. An interim guarantee is based on requirements in other jurisdictions.	Meets CPA obligations (June 2003)
	Racecourses Act 1935 *Racing Act 1999*	Approvals, conduct, licensing	Review was not required for the Racecourses Act. Gatekeeper provisions applied to the Racing Act.	Racecourses Act was repealed and in part replaced by the Racing Act. The new legislation was assessed under the ACT's gatekeeper provisions for new legislation.	Meets CPA obligations (June 2002)

(*continued*)

Table 9.8 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Northern Territory	*Racing and Betting Act* and Regulations *Unlawful Betting Act* and Regulations	Licensing and registration	Review was completed and is due to be considered by the Government shortly.		Review and reform incomplete

Gaming machines

All States and Territories, except Western Australia completed reviews of gaming machine legislation or have reviews under way. The Western Australian Government considered the regulation of gaming machines (which are located only in the Burswood Casino) when reviewing its casino legislation (Table 9.5). Table 9.9 summarises jurisdictions' progress in reviewing and reforming their gaming machine legislation.

New South Wales

In New South Wales, the *Liquor Act 1982* and the *Registered Clubs Act 1976* regulate gaming machine activity. A joint review of these Acts commenced in 1999 but was not completed. In 2001, the Government implemented changes to gaming machine regulation, including a freeze on the number of machines in hotels and clubs, via the *Gaming Machines Act 2001*. (The Gaming Machine Act deals with the gambling provisions of the Liquor Act and the Registered Clubs Act.) The Act caps machine numbers, both in total (104 000) and by venue type (450 for clubs and 30 for hotels), establishes markets for existing licences, limits operating hours for gaming machines, restricts advertising and introduces other harm minimisation measures. The Department of Racing and Gaming completed a review of the Gaming Machines Act in March 2003. The Government has considered the review findings and publicly released the review report in June 2003. The review found a net public benefit arising from the harm minimisation measures contained in the Act. The review also found that a restriction on the transferability of licences from nonmetropolitan to metropolitan New South Wales was important in maintaining social cohesion in rural areas.

The harm minimisation reforms (such as the requirement for clubs and the casino to establish links with problem gambling counselling services, restrictions on advertising and restrictions on hours of opening) fall within the range of those measures endorsed by the Productivity Commission and CoAG, thus meet the CPA clause 5 guiding principle.

Competition questions also arise from the Gaming Machines Act's granting of TAB Limited's exclusive investment licence to supply, finance and share the profits from gaming machines in hotels. The first issue is the exclusivity of the investment licence. In its 2003 NCP annual report, New South Wales reported more fully on the public benefit reasons for granting the licence, New South Wales stating that before the introduction of the investment licence:

- approved gaming devices could be supplied to hoteliers only by the holder of an amusement device dealer's licence (a dealer) or the holder of an amusement device seller's licence (a seller);

- only a person approved by the Liquor Administration Board could finance the acquisition of approved gaming devices, and the board would not approve a dealer or a seller; and

- a hotelier could share receipts from an approved gaming device only with a person who had a financial interest in the hotel declared to the Licensing Court.

The Government's reasons for introducing the investment licence were:

- to assist smaller hotels to acquire approved gaming devices that comply with the standard adopted by the Liquor Administration Board in 1995. All approved gaming devices were to comply with this standard by 31 December 2000. Many smaller hotels required assistance to finance the replacement of noncomplying approved gaming devices. (To date, 14 venues have entered financial arrangements with TAB Limited under the investment licence, for 154 gaming machines); and

- to facilitate the introduction of the Statewide Linked Jackpots System by permitting TAB Limited to finance approved gaming devices in hotels.

New South Wales considered that introducing the investment licence increased competition in the markets for the supply of approved gaming devices and for the financing of approved gaming devices, by giving hoteliers a choice between:

- outright acquisition from a dealer or a seller;

- outright acquisition from the holder of an investment licence;

- acquisition from a dealer, seller or the holder of an investment licence with some form of financing from a financier not otherwise connected to the gaming industry; and

- acquisition from the holder of an investment licence with some form of financing or sharing of profits.

New South Wales also considered that the potential for monopolistic conduct by TAB Limited will be limited by competition from dealers and sellers in relation to supplying approved gaming devices, and from financiers not connected to the gaming industry in relation to financing the acquisition of approved gaming devices. It stated that dealers and sellers have historically been restricted from financing or sharing in the profits of approved gaming devices because of conflicts of interest and probity issues that may arise if dealers or sellers have a stake in the profits of the approved gaming devices that they sell to hoteliers. It also stated that the Government is particularly concerned with maintaining responsible gambling policies and that allowing dealers and sellers to share in the profits of approved gaming devices might undermine these policies. On the issue of probity, New South Wales pointed out that both TAB Limited and host venues (hotels) have satisfied probity obligations

The second issue is a potential conflict of objectives. TAB Limited has an exclusive licence to monitor gaming machines (the centralised monitoring system — CMS) in addition to its exclusive investment licence. TAB Limited thus seeks to ensure gaming machine probity under its monitoring role while ensuring gaming machine returns are maximised. The New South Wales Government previously reported that controls and procedures within TAB Limited adequately address this matter. It stated that TAB Limited 'appears to be diligent in ensuring that staff throughout its CMS and non-CMS operational units are aware that CMS data about club and hotel gaming operations must remain confidential to the CMS unit' (Government of New South Wales 2002, p. 32). The Council has no reason to doubt the probity of TAB Limited, but nevertheless observes that a more structured ringfencing arrangement would give greater assurance on probity matters.

While the activities of TAB Limited under the terms of the investment licence will increase competition, even greater competition would result if other suppliers who meet probity requirements were allowed to carry out similar functions. The Council considers that New South Wales has not established a public benefit case for making the investment licence an exclusive licence. The Council thus assesses New South Wales as not having met its CPA obligations in relation to the Gaming Machines Act.

Victoria

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

Victoria also regulates the gaming industry through measures such as Statewide and regional caps, advertising restrictions and requirements to provide consumer information on gaming machine operations. Victoria introduced further responsible gambling measures as part of the *Gaming Machine Control (Amendment) Act 2002.* Harm minimisation measures include modifying game and gaming machine design, restricting cash accessibility in gaming venues, regulating player loyalty programs and enabling the introduction of more stringent advertising restrictions.

As reported in the 2002 NCP assessment, the Council considers that Victoria has met its CPA clause 5 obligations relating to gaming machine legislation.

Queensland

Queensland reviewed its *Gaming Machine Act 1991* as part of its omnibus gambling review. The draft review report examined venue caps (280 for

licensed clubs and 40 for hotels), noting that machine numbers in hotels had risen from 4963 in June 1997 to 13 360 in June 2000 as the venue cap was increased. Over the same period, machine numbers in licensed clubs had increased from 16 079 to 18 360. The review concluded that applying the same cap to hotels as to clubs would lead to further growth in machine numbers and associated harm. The review also supported the higher cap for clubs on the grounds that the revenue raised from gaming machines in clubs is used to fund community facilities and activities. Further, it supported the Statewide cap on gaming machines, finding that the removal of this restriction would lead to the continued proliferation of gaming machines in the State and encourage problem gambling.

Each club and hotel in Queensland is required to enter into an agreement with a licensed monitoring operator. The operators insure the integrity of each machine and supply the Government with financial information from each gaming machine. They also supply new and used machines, ancillary gaming equipment and other services, including maintenance. Currently there are four licensed monitoring operators and each is restricted to a maximum of 40 per cent of total market share. The draft review examined the 40 per cent limit finding that the provision ensures that Queensland has more competitors in the market than other jurisdictions. It doubted, however, that the restriction was necessary in the current market, in which experienced operators use well tested systems. Further, it found that removing the restriction is unlikely to markedly reduce the number of licensed monitoring operators in the market and that the Government's ability under the Act to set a maximum price for monitoring services should ensure smaller venues are not disadvantaged by licensed monitoring operators attempting to use their market power to raise prices.

The Government is completing the review and expects to finalise its response in September 2003.

Because Queensland did not complete its review and reform activity, the Council assesses Queensland as not having complied with its CPA obligations in relation to gaming machines.

South Australia

South Australia considered its *Gaming Machine Act 1992* as part of the omnibus review of its gambling legislation that reported in 2003. Gaming machines at the Adelaide Casino are regulated under the *Casino Act 1977* and the Casino Approved Licensing Agreement. The provisions of that Act and the Agreement reflect the provisions of the Gaming Machines Act including definitions.

The review found that:

- the restriction on gaming machine licences being issued to hotels and clubs only is justified as a harm minimisation measure;

- the role of the State Supply Board as single gaming machine supplier and service licensee should be removed and a more competitive market structure should be developed; and

- a scheme enabling the transfer between venues of the right to operate gaming machines (without breaching the venue cap) should be introduced.

The Government concurred that a more competitive arrangement should replace the State Supply Board's monopoly on service provision. It considered, however, that the board's role as the single supplier of machines has public benefits in that:

- the Office of the Liquor and Gambling Commissioner approves all applications lodged for new gaming machines and components and no unauthorised machines or games are ordered;

- gaming machine sales comply with legislative provisions prohibiting installation of new games with less than a 87.5 per cent return to players;

- all machines are installed as per approved applications;

- financial arrangements between parties are transparent and equitable, with gaming machine licensees paying the board for gaming machines and components before installation, and the board forwarding payment to manufacturers after installation;

- the purchase of machines is allowed only where appropriate spare parts are in stock and where technicians have been trained in the servicing and operation of the machine;

- all machines purchased are supplied with a service and operation manual in accordance with terms and conditions of the agreement; and

- all dealings are in accordance with the Act.

The Government considers that alternative approaches of strict regulatory approvals and probity processes for manufacturers are complicated by the multinational nature of the businesses and authorised officers. It considers that the board acts to overcome these difficulties, ensuring all gaming machine licensees receive equitable treatment and removing the opportunity for any dubious financial dealings. The board scrutinises the content of all sale agreements and can ensure these are within expectations — for example, manufacturers cannot seek profit sharing arrangements with licensees or provide favourable pricing terms to a single licensee without justification.

The Government has stated that:

- it expects to introduce legislative amendments to abolish the State Supply Board's service licence in the spring 2003 session of Parliament; and

- it will further consider other review findings (including the proposal for a permit transfer scheme) once the Independent Gambling Authority's

inquiry into the future management of gaming machine numbers in South Australia is completed.

The Council notes that the State Supply Board's monopoly on gaming machine supply does not require venues to deal with a single supplier when purchasing gaming machines. The arrangements require venues to deal through the State Supply Board once the venue has made arrangements to deal with a gaming machine manufacturer. The process does not restrict competition in dealing with manufacturers or selecting or negotiating purchase agreements. The Council accepts that it provides a benefit by ensuring that regulatory standards are met via the requirement that all agreed commercial contractual arrangements pass through the State Supply Board.

Because South Australia is yet to fully respond to its review recommendations on permit transferability the Council assesses it as not having complied with its CPA obligations in relation to gaming machines.

Tasmania

Tasmania completed a minor review of its *Gaming Control Act 1993*, finding that the restrictions on gaming machine operations should be retained on the grounds of probity. The review specifically excluded the 1993 Deed between the Crown and Federal Hotels that gave Federal Hotels an exclusive 15 year licence to conduct casino and gaming machine operations.

In correspondence dated 13 December 2001, Tasmania advised the Council that:

- a compensation claim would arise from revoking the exclusive licence; and
- it did not intend extending or renewing the licence with Federal Hotels beyond its expiry date.

In response, the Council indicated that it:

- accepted Tasmania's argument that the likely compensation claim from early termination of the exclusive licence may exceed any benefits from ending the licence before its expiry date; and
- sought a clear undertaking that Tasmania would not consider any exclusivity arrangements beyond 2008 with any potential operator.

On 6 May 2003, the Tasmanian Treasurer advised the Council that Tasmania would introduce legislation granting Federal Hotels an exclusive 15 year licence to conduct casino and gaming machine operations until 2018[9]. The Treasurer also announced the introduction of a Statewide legislative cap on

[9] Some background to this decision is provided in the section on casinos.

gaming machines to be set at 3680 — 287 more than the current number of machines in Tasmanian venues. The arrangements provide for a limit of 2500 gaming machines to be accessible through hotels and clubs. Venue limits for machines are to remain at the current limits of 30 for licensed hotels and 40 for licensed clubs.

Tasmania's regulatory impact statement finds the benefits of the restrictions outweigh the costs, and justified the caps on the basis of harm minimisation and consumer protection. Referring to the Productivity Commission finding that caps on gaming machine numbers can encourage gaming operators to operate existing machines more intensely and in areas where they achieve highest returns, the regulatory impact statement argued that retaining venue caps will limit this behaviour by Federal Hotels. Also, the limit on the total number of machines which may be installed in hotels or clubs means that Federal Hotels will be unable to increase the wider availability of machines through clubs and hotels by reducing the number of machines at the State's two casinos.

The regulatory impact statement stated that there is no statutory limitation on the number of machines, other than the venue limits in the current Deed. It also stated that Federal Hotels indicated that if it did not have exclusivity, then it would significantly increase the number of gaming machines. The regulatory impact statement concluded that in the absence of exclusivity, the 1993 Deed would prevent the Government from introducing caps on gaming machines before 2008, resulting in an estimated increase of at least 1500 in machine numbers during this period.

In return for exclusivity, Federal Hotels agreed to:

- give up its existing rights to increase gaming machine numbers without restriction (see above);
- increase the contribution rate to the Community Support Levy, in respect of licensed clubs, from 2 per cent to 4 per cent of gross profit and at no cost to clubs; and
- use its best endeavours to improve player protection measures and to support State Government efforts in this area.

In addition, Federal Hotels will pay higher annual licence fees and higher gaming machine taxes, and venue operators will receive higher financial returns from Federal Hotels and an enhanced ability to choose the machine/game mix for their particular venue. The regulatory impact statement argued that the latter offsets venues' lack of choice of gaming machine operator.

The changes to the Gaming Control Act required to provide the exclusive licence were passed by Tasmania's Legislative Assembly in June 2003, but have not been passed by the Legislative Council.

Tasmania considers that the nature of the Deed previously entered into with Federal Hotels means that exclusivity is the only way to achieve the objective of limiting gaming machine numbers. The regulatory impact statement did not indicate how it arrived at the figure of 1500 new machines in the absence of exclusivity. Tasmania subsequently explained that the estimated increase in machine numbers is based on the number of currently licensed venues that would be entitled to an increased number of machines and an estimate of the number of currently unlicensed venues, hotels predominantly, that could accommodate gaming machines in future. However, the extent of any future increase in machine numbers remains uncertain, particularly as Federal Hotels has not already seen fit to exercise its unrestricted power to increase machine numbers. The regulatory impact statement rejected counteracting the potential increase in gaming machine numbers with increased player protection and harm minimisation measures on the grounds that the gambling industry is already highly regulated and that further regulation would impinge on the legitimate nature of gambling as a form of entertainment for the community. It maintained that tighter regulatory measures are not guaranteed to increase player protection. However, Tasmania does not appear to have fully considered the range of alternative measures available to reduce the intensity of machine use and thereby offset the impact of any increase in machine numbers.

The public benefit argument that applies to casino exclusivity — that exclusivity limits access to a form of gambling (table games) — cannot be applied to gaming machines because they are already easily accessed. The entry of additional suppliers of gaming machines into the Tasmanian market (or the threat of entry) would possibly bring some benefits in expanded choice for venue owners and consumers. The Council has already indicated its acceptance of Tasmania's position that the likely compensation claim from termination of the exclusive licence before 2008 may exceed any benefits from ending the licence before this date. However, the Council would consider Tasmania as failing to meet its CPA obligations if the proposed extension to the exclusive licence proceeds. The Council considers that Tasmania's proposal to extend the exclusive licence would have the effect of eliminating any prospect of competition for a lengthy period without the support of a compelling public interest case.

Tasmania also completed its review of the *TT-Line Gaming Act 1993* which provides for the licensing of gaming machines and other gaming activities on board TT line ships. The review recommended retaining the licensing and other restrictions in the public interest. The Council assesses Tasmania as having complied with its CPA obligations in relation to this Act.

The ACT

The ACT's legislation discriminates between gaming machine venues. Only registered clubs may obtain licences for class C machines (more modern machines). Six holders of a general liquor licence are each eligible for up to 10 licences of class B machines (older, draw poker machines) and tavern

licensees may apply for a maximum of two class A machines (simple machines that are no longer manufactured).

The ACT completed an initial review of its *Gaming Machine Act 1987* in 1998, but subsequently referred the Act to the ACT Gambling and Racing Commission for review. The commission finalised its review during 2002 and provided it to the Government in October 2002.

The review report was released in October 2002. Its most significant recommendation was to restrict gaming machine licences to clubs. The report considered that gaming machine revenue should be used for the benefit of the community rather than for the profit of the licensee but that allowing all not-for-profit organisations to access licences would create difficulties in monitoring entities' administrative arrangements. It stated that among not-for-profit organisations, clubs have historically demonstrated that they are ideally set up to control and operate gaming machines. The report also recommended:

- tightening the definition of a club and more clearly specifying the amounts to be paid as community and charitable contributions;
- breaking the nexus between liquor and gaming machines by:
  - phasing out the right to operate class B gaming machines as held by six general liquor licence holders; and
  - not allowing tavern licensees to replace their obsolete class A gaming machines with class C machines;
- maintaining the current cap on gaming machines (5200); and
- introducing a central monitoring system.

The review did not clarify the objectives of the Act. The ACT Government has, however, informed the Council that it considers that a primary objective of any revised legislation should be to ensure that the benefits from the proceeds of the operation of gaming machines accrue to the community. It considers that this objective could not be achieved in any other way apart from restricting the issue of gaming machine licences to 'not for profit' organisations, specifically licensed clubs. The Council considers that the restriction of licences to clubs does not appear necessary to meet another possible objective of the Act — that of minimising harm from problem gambling. The ACT Government is yet to announce its response to the review report, and the Council therefore assesses the ACT as not having complied with its CPA obligations in this area.

The Northern Territory

The Northern Territory review of its gaming machine legislation is complete and is due to be considered by the Government shortly. The Northern Territory did not complete its reform activity therefore the Council it as not having complied with its CPA obligations in relation to gaming machines.

Table 9.9: Review and reform of legislation regulating gaming machines

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Liquor Act 1982* *Registered Clubs Act 1976*	Regulation of the use and supply of gaming machines	A preliminary review was overtaken by the gaming reform package of July 2001.	The gambling provisions of the Acts are covered by the by the *Gaming Machines Act 2001*.	Meets CPA obligations (June 2003)
	Gaming Machines Act 2001	Regulation of the use and supply of gaming machines; provision for an exclusive investment licence for TAB Limited to supply and finance gaming machines for hotels and to share in the profits of the gaming machines supplied.	Review was completed by the Department of Gaming and Racing in March 2003 and publicly released in June 2003. It found that there is a net public benefit from the harm minimisation measures contained in the Act.	The Government is considering the review report. New South Wales has reported that it considered the exclusive investment licence to be in the public interest as it increases competition in the supply and finance of approved gaming machines.	Does not meet CPA obligations (June 2003)
Victoria	*Gambling Legislation (Responsible Gambling) Act 2000* *Gambling Legislation (Miscellaneous Amendments) Act 2000*	Caps, regional caps, advertising restrictions, conduct	Gatekeeper provisions apply.	New legislation was accepted. These amendment Acts introduced responsible gambling initiatives and key restrictions such as regional caps and advertising controls in all gambling-related legislation in Victoria.	Meets CPA obligations (June 2002)
	Gaming No. 2 (Community Benefit) Act 2000	Operations, conduct	Act revised the *Gaming No. 2 Act 1997*. Gatekeeper provisions apply.	New legislation protects minors and reduces the market power of bingo venues, to enhance charitable and community organisations' fundraising abilities.	Meets CPA obligations (June 2001)

(*continued*)

Table 9.9 continued

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Victoria (continued)	*Gambling Legislation (Responsible Gambling) Act 2000* *Gambling Legislation (Miscellaneous Amendments) Act 2000*	Caps, regional caps, advertising restrictions, conduct	Gatekeeper provisions apply.	New legislation was accepted. These amendment Acts introduced responsible gambling initiatives and key restrictions such as regional caps and advertising controls in all gambling-related legislation in Victoria.	Meets CPA obligations (June 2002)
	Gaming Machine Control Act 1991 *Gaming and Betting Act 1994* as it relates to a gaming operator's licence and relevant regulation	Licensing, ownership, number of machines	Review was completed in 2000. It recommended: • ending current licences as soon as possible (noting that they expire in 2012); • renegotiating the Agreement Act to ensure ongoing support for the racing industry, independent of the existing duopoly and financing arrangements; • removing the licence requirement for monitoring and control; • removing the restriction that at least 20 per cent of gaming machines be allocated to nonmetropolitan Victoria; • retaining the 50:50 club:hotel split; • implementing a package of measures to regulate quasi-clubs; • retaining venue limits on machine numbers; • retaining existing probity restrictions	Review report and Government response were released 18 July 2001. The Government accepted most of the review recommendations.	Meets CPA obligations (June 2003)

(*continued*)

Table 9.9 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Victoria (continued)			• retaining restrictions on 24-hour gaming; and • retaining the restriction on an operator having two venues within 100 kilometres of each other.		
Queensland	*Gaming Machine Act 1991*	Licences, venue caps	Omnibus public benefit test review is under way. A draft review report was released for public consultation in April 2003. The review recommended the continuation of a Statewide cap and venue caps, differential caps for clubs and hotels and the removal of the requirement that a Licensed Machine Operator hold no more than 40 per cent of the market.	The Government's response is expected later in 2003.	Review and reform incomplete

(*continued*)

Table 9.9 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
South Australia	*Gaming Machines Act 1992*	Licences, conduct restrictions	Part of an omnibus review of South Australia's gaming legislation completed in 2003. For gaming machines, the review recommended that: • the restriction on gaming machine licences being issued to only hotels and clubs is justified on a harm minimisation basis; • the role of the State Supply Board as the single gaming machine supplier and service licensee should be removed and a more competitive market structure should be developed; • venues should be able to transfer the right to operate gaming machines (without breaching the venue cap).	The Government has accepted a number of the review recommendations but has not passed amending legislation.The Government intends to retain the State Supply Board as a monopoly supplier of gaming machines on the basis that this allows regulatory standards to be met, but does not restrict venues in their dealings with gaming machine manufacturers.	Review and reform incomplete
Tasmania	*Gaming Control Act 1993*	Deed provides an exclusive licence to supply and operate gaming machines	The initial decision to grant exclusivity has not been reviewed. A proposed extension of the exclusive licence was accompanied by a regulatory impact statement arguing that this was in the public interest because it prevented an increase in machine numbers in venues where more intensive machine use is likely.	Parliament is yet to pass a Bill to implement the extension of the exclusive licence.	Review and reform incomplete

(*continued*)

Table 9.9 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Tasmania (continued)	*TT-Line Gaming Act 1993*	Licensing, market conduct, operations	Review was completed. It recommended retaining restrictions.	The Government accepted the recommendations.	Meets CPA obligations (June 2003)
ACT	*Gaming Machine Act 1987*	Licensing and conduct	The review of the *Gaming Machine Act 1987* by the ACT Gaming and Racing Commission reported in October 2002. The review recommended restricting the issue of gaming machine licences to clubs and phasing out the licences held by some liquor licence holders.	The Government is yet to respond to the review the Gaming Machine Act.	Review and reform incomplete
Northern Territory	*Gaming Control Act* and Regulations *Gaming Machine Act* and Regulations	Licensing, operations, conduct	Review was completed.	The Government is considering the review.	Review and reform incomplete

Internet gambling

Table 9.10 summarises jurisdictions progress in reviewing and reforming their internet gambling legislation.

The Commonwealth

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

The Commonwealth Government has initiated a statutory review of the *Interactive Gambling Act 2001*, as required by s. 68 of that Act. The review is required to consider the social and commercial impact of interactive gambling services and the effectiveness of the Act in dealing with these effects. A draft report for Ministerial consideration was expected in mid-2003.

Because the Commonwealth Government did not complete its review and reform activity, the Council assesses it as not having complied with its CPA obligations in this area.

Victoria

Victoria enacted the *Interactive Gaming (Player Protection) Act 1999* to enhance consumer protection. The Act's measures are consistent with those endorsed by the Productivity Commission inquiry, so the Council assesses Victoria as having complied with its CPA obligations in this area.

Queensland

Queensland's *Interactive Gaming (Player Protection) Act 1998* provides for the licensing and control of all forms of interactive gambling in Queensland. The Commonwealth Government subsequently enacted its legislation prohibiting Australian online and interactive gambling service providers (other than some lotteries and wagering) from providing services to people in Australia. As a result, the only operator licensed under Queensland's legislation surrendered its licence on 1 October 2001. Queensland is considering the Act as part of its omnibus review of gambling legislation. It expected to complete the review and finalise the Government response by July 2003.

Given the nature of the restrictions in the Commonwealth Act, the Council accepts that it is appropriate for the Commonwealth to complete its review before Queensland completes its review.

The ACT

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

In its 2002 NCP assessment, the Council expressed its concern with licensing processes that provide entities, including Ministers, with discretionary powers where the criteria for applying the discretion are not defined. The Council considers that objective public criteria focusing on probity and consumer protection objectives should be specified to guide the Minister's application of the discretion.

The ACT Gambling and Racing Commission is conducting a review of the *Interactive Gambling Act 1998*, primarily as a consequence of the enactment of the Commonwealth *Interactive Gambling Act 2001*. The Commonwealth Government is to conduct a statutory review of its Act over the remainder of 2003, and the ACT considered it prudent for the outcomes of the Commonwealth's review are known before completing its own review. The ACT acknowledged the Council's concern with the licensing processes and will examine them as part of the commission's review.

Given the nature of the restrictions in the Commonwealth Act, the Council accepts that it is appropriate for the Commonwealth to complete its review before the ACT completes its review.

Table 9.10: Review and reform of legislation regulating Internet gambling

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
Commonwealth	*Interactive Gambling Act 2001*	Bans on the issue of internet gambling licences that would provide gambling services to Australian players	Review has commenced and will report in 2003.		Review and reform incomplete
Victoria	*Interactive Gaming (Player Protection) Act 1999*	Licensing, conduct restrictions		Act is directed at consumer protection and consistent with the Productivity Commission's approach.	Meets CPA obligations (June 2003)
Queensland	*Interactive Gaming (Player Protection) Act 1998*	Licensing, conduct restrictions	Act was included in Queensland's omnibus review of its gambling legislation.	Act was overtaken by the Commonwealth Act, banning Internet gambling.	Review and reform incomplete
The ACT	*Interactive Gambling Act 1998*	Licensing, conduct restrictions	Review is under way but now awaiting completion of the Commonwealth review.		Review and reform incomplete.

Minor gambling

The category of minor gambling encompasses games such as keno, charitable fundraising and trade promotions. The incidence of problem gambling with these activities is usually low and probity hurdles are often lower, reflecting the nature of the activities and their operators, and the low level of funds involved. Table 9.11 summarises jurisdictions' progress in reviewing and reforming their minor gambling legislation.

New South Wales

New South Wales repealed the *Gaming and Betting Act 1912* and replaced it with three Acts: the *Gambling (Two Up) Act 1998*, the *Unlawful Gambling Act 1998* and the *Racing Administration Act 1998*. New South Wales informed the Council that the Unlawful Gambling Act is not for NCP review and that it is reviewing the Racing Administration Act in the general racing legislation review. The Gambling (Two Up) Act is new legislation that New South Wales reported was reviewed in September 1998. As well as providing for the rules of the game, protection to minors and other probity and harm minimisation measures, the Act restricts the lawful playing of two-up to games played in accordance with the Act on Anzac Day and to games played in Broken Hill. The review retained this restriction because it found that deregulation may encourage the entry of unscrupulous operators running unfair games, incurring additional costs for ensuring compliance with rules and protecting players. Submissions to the review suggested no public demand for increased availability of the game.

New South Wales undertook a combined review of the *Lotteries and Art Unions Act 1901* and the *Charitable Fundraising Act 1911*. The Government released the review on 28 October 2002. The Acts relate to what is often minor gambling — mostly fundraising by charitable organisations and not-for-profit organisations, and 'free' lotteries and trade promotions.

The review recommended:

- including specific objects for the Lotteries and Art Unions Act;
- having the States and Territories explore the possibility of greater uniformity in their minor gambling legislation;
- using a negative licensing approach to games of chance conducted by registered clubs;
- relaxing the 'foreign' (that is, not New South Wales) lottery restrictions to permit the conduct of Australian community-based lotteries in New South Wales, provided such lotteries meet the same standards of probity and fairness expected of a New South Wales lottery; and

- removing the restriction on cash prizes that may be offered in trade promotion lotteries.

The Government accepted the review recommendations, and Parliament passed amending legislation in June 2003. The Council thus assesses New South Wales as having complied with its CPA obligations in relation to minor gambling.

Victoria

The Victorian review of the *Club Keno Act 1993* reported in September 1997 and made four recommendations as follows:

- that permissible venues for club keno should be liberalised to include, for example, any club or hotel in Victoria and sale through retail outlets;

- that exclusive licences given to Tattersall's and TABCORP be removed and club keno licences made available to those who pass probity checks;

- that flexibility exist in game rules to allow potential competitors to propose new game rules; and

- that, in view of the small relative size of club keno and foreshadowed, the government may wish to combine reform implementation with other changes to gambling legislation

The Government released its response in 2003. Victoria previously advised that its priority is problem gambling and that club keno does not generate significant problem gambling concerns. Further, the Government intends to review its entire gambling legislative framework, including the Club Keno Act, within its current term. The Government's accepted the last recommendation and decided to consider the other review recommendations until as part of the comprehensive review of the Victorian electronic gaming machine industry scheduled for 2006.

The Council notes that the Government's decision to defer action until 2006 is in accord with the review's last recommendation. Also, as club keno is a minor game in the overall gambling market, the Government's decision will have only minor consequences, the Council assesses Victoria as having met its CPA obligations in relation to this legislation.

Queensland

Queensland is considering the *Keno Act 1996* and the *Charitable and Non-profit Gambling Act 1999*[10] as part of its omnibus gambling legislation review.

[10] The *Charitable and Non-profit Gambling Act 1999* replaced the *Art Unions and Public Amusements Act 1992*, which was repealed.

Currently, Jupiter's Gaming Pty Ltd has an exclusive licence to provide keno until 2007. The draft review supported the exclusive licence as necessary to permit the operator to develop short-term and medium-term viability in given the costs of establishing keno operations. The draft report noted that the Government would have to pay compensation if it revoked exclusivity and that the Government could consider issuing a second licence after 2007. Charitable and nonprofit gaming is regulated in four categories and in most cases, a licence is not required. Queensland expected to complete the review and finalise the Government response by July 2003.

Because Queensland did not complete its review and reform activity, the Council assesses it as not having met its CPA obligations in relation to minor gambling.

Western Australia

Minor gaming in Western Australia is regulated by the Gaming Commission Act 1987. A review of the Act was completed in 1998 and recommended:

- removing the restriction on casino games being played for community gaming, subject to appropriate changes being negotiated in the Burswood Casino Agreement;
- removing the restriction on the playing of two-up, subject to appropriate changes being negotiated in the Burswood Casino Agreement;
- retaining a licensing system for organisations conducting bingo which should be conducted for community benefit rather than for private gain;
- retaining licensing requirements and associated operation restrictions for minor lotteries which should continue to be available to only charitable and community-based organisations; and
- licensing professional fundraisers.

Amendments to legislation to effect the review recommendations are yet to occur. The Council therefore assesses Western Australia as not having complied with its CPA obligations for minor gambling.

South Australia

South Australia regulates minor gambling under the *Lottery and Gaming Act 1936*. The Act authorises fundraising and trade promotion lotteries, bingo and sweepstakes, and requires licences when prizes in these activities exceed given amounts. The Act was included in South Australia's omnibus review of its gambling legislation. The review reported in March 2003 and found that the legislation protects consumers by ensuring the probity and integrity of gambling activities, but suggested the following minor amendments:

- participation in bingo and the purchase of instant lottery tickets should be restricted to individuals aged 18 years and over; and

- sweepstakes and Calcutta sweepstakes should be conducted on only events approved for this purpose by the Independent Gambling Authority.

The Government concurred with the review findings, but it noted that the age limit for participation in bingo and instant lottery tickets should be the same as that for the sale of SA Lotteries products, (16 years). The lotteries age limit is before the Parliament for consideration.

The Council assesses South Australia as not having complied with its CPA obligations in relation to minor gambling because the State did not complete its reform activity.

Tasmania

Tasmania drafted new legislation (included in the *Gaming Control Act 1993*) covering minor gambling, including charitable and nonprofit gambling. The Government considered this legislation under its legislation gatekeeper provisions (see Chapter 13) and found that the restrictions contained in the Act are justified as being in the public benefit. The Council assesses Tasmania as having met its CPA obligations in relation to minor gambling.

Table 9.11: Review and reform of legislation regulating minor and other gambling

Jurisdiction	*Legislation*	*Key restrictions*	*Review activity*	*Reform activity*	*Assessment*
New South Wales	*Gaming and Betting Act 1912*	Licensing, market conduct	Act is not for review.	Act was repealed and made into three parts for separate review (*Unlawful Gambling Act 1998, Gambling (Two Up) Act 1998* and *Racing Administration Act 1998*).	Meets CPA obligations (June 2001)
	Unlawful Gambling Act 1998		Review is not required, as it is a criminal Act not subject to NCP.		Meets CPA obligations (June 2001)
	Gambling (Two Up) Act 1998	Market conduct, rules	Review was completed in 1998. It recommended retaining the regulations that stipulate the rules of the game and restrictions on when and where two-up may be played, finding that deregulation may encourage entry by unscrupulous operators running unfair games.	Reform is not required.	Meets CPA obligations (June 2003)

(*continued*)

Table 9.11 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
New South Wales	*Lotteries and Art Unions Act 1901* *Charitable Fundraising Act 1991*	Conduct, operations	A joint review was completed in July 2002. It recommended relaxing the restrictions on: • the maximum value of cash prizes that may be offered in conjunction with a trade promotion; and • cross-border advertising and sales. It also recommended the introducing a negative licensing system for games of chance conducted by registered clubs.	The Government accepted the review recommendations and amending legislation was passed in June 2003.	Meets CPA obligations (June 2003)
Victoria	*Club Keno Act 1993*	Rules, conduct	Review was completed in 1997, Recommending reforms to eligible venues, licensing, and provision for potential rule changes. The review also recommended synchronising reforms with changes to the electronic gaming machine industry arising from a foreshadowed review in 2006.	The Government will consider the recommended reforms as part of the 2006 review of the electronic gaming machine industry.	*Meets CPA obligations (June 2003)*
Queensland	*Art Unions and Public Amusements Act 1992*			Act was repealed and replaced with the *Charitable and Non-profit Gaming Act 1999*.	Meets CPA obligations (June 2001)
	Keno Act 1996 *Charitable and Non-profit Gambling Act 1999*	Exclusive licences, other licences, market conduct, and rules	Omnibus public benefit test review is under way. A draft review report was released for public consultation in April 2003.	The Government's response is expected later in 2003.	Review and reform incomplete

(*continued*)

Table 9.11 continued

Jurisdiction	*Legislation*	Key restrictions	Review activity	Reform activity	Assessment
Western Australia	*Gaming Commission Act 1987* (as it relates to minor gaming)	Licensing, rules, conduct	Review was completed in 1998. It recommended no change to most restrictions, including licensing for most minor gaming activities. It recommended removing restrictions on casino games for community gaming, and two-up, subject to necessary changes being negotiated in the Burswood Casino Agreement and licensing of professional fundraisers.	Amendments have not been made yet.	Review and reform incomplete
South Australia	*Lottery and Gaming Act 1936*	Licensing, rules	The Act was included in South Australia's omnibus review of its gambling legislation. The review reported in March 2003 and found that the legislation protects consumers by ensuring the probity and integrity of gambling activities. The review suggested minor amendments, including a requirement that only those 18 years and over be allowed to participate in bingo and purchase instant lottery tickets.	The Government concurred with the review findings but it noted that the age limit for participation in bingo and instant lottery tickets should be the same as that applicable to the sale of SA Lotteries products, (currently 16 years). The age limit for SA Lotteries products is currently the Parliament for consideration.	Review and reform incomplete
Tasmania	*Racing and Gaming Act 1952* (as it relates to minor gaming)	Licensing, conduct, operations	Minor review was completed.	Gaming components of this Act were transferred to the *Gaming Control Act 1993* and assessed under the gatekeeper provisions. The restrictions were found to be in the public interest.	Meets CPA obligations (June 2003)