10 Australian Government

A1 Agricultural commodities

Dairy Produce Act 1986

When the Competition Principles Agreement (CPA) came into being, the Dairy Produce Act:

- levied producers of drinking milk and provided for paying the proceeds to producers of milk for manufacturing — an arrangement known as the Domestic Market Support (DMS) scheme
- licensed dairy exports to markets with access restrictions, most importantly cheese, skim milk powder and butter to Japan, and cheese to the European Union and United States
- via a tariff quota system, restricted some cheese imports into Australia.

On 30 June 2001 the DMS scheme ended. In July 2002 the licensing of cheese exports to Japan ended. In July 2003 the Australian Dairy Corporation and the Dairy Research and Development Corporation became Dairy Australia, a company limited by guarantee constituted under the *Corporations Act 2001*, and export control functions of the former corporation were transferred to the Australian Government Department of Agriculture, Fisheries and Forestry. In the 2003 NCP assessment, the National Competition Council found that the Australian Government had not met its CPA obligations arising from the Dairy Produce Act because it had not reviewed remaining restrictions.

In January 2004 the Australian Government made new regulations that extended restrictions on the export of cheese to the European Union and United States under those countries' respective concessional tariff-quota arrangements for imports of Australian cheese. The regulations provide for the annual allocation of access among Australian cheese exporters according to access rights that are transferable and divisible. Forfeited access rights are available to new entrants or may be reallocated to existing holders.

The only remaining restrictions on competition, therefore, are necessary to meet the requirements of access to the EU and US cheese markets, and such access is allocated among Australian exporters in a manner that restricts competition to the least extent possible.

The Council thus assesses that the Australian Government has met its CPA clause 5 obligations arising from the Dairy Produce Act.

Wheat Marketing Act 1989

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

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

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

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

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

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

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

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

The committee felt, however, that it would be premature to repeal the Act without a further relatively short evaluation period. The committee was concerned that the estimation of benefits and costs is complex, and that some uncertainty remained. It also believed 'that the new more commercial arrangements for wheat marketing might achieve more clearly demonstrable net benefits than was evident during this review' (Irving *et al*. 2000, p. 7). The committee recommended, therefore, that:

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

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

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

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

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

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

The government agreed to the development of rigorous and transparent performance indicators to ensure the 2004 review accurately measures the benefits to industry and the community. A working group — comprising the WEA, the AWBI, the Department of Agriculture, Fisheries and Forestry, and the Grains Council of Australia — was formed to develop the performance measurement framework, accounting for the views of the other industry representatives. The authority released the framework on 4 September 2001; it has since reported annually on its monitoring results to the Minister for Agriculture, Fisheries and Forestry and the Grains Council of Australia, and released a summary report to the public.

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

In June 2002 the Council assessed that the Australian Government had not met its CPA clause 4 and 5 obligations arising from the Wheat Marketing Act, because the review did not show that retaining the wheat export single desk is in the public interest. Rather, the review found that allowing competition is more likely to be of net benefit to the community. The Council also found that the export consent arrangements administered by the WEA were substantially more restrictive than recommended by the review, and noted that the Office of Regulation Review reported in November 2001 that the regulation impact statement prepared for the revised export consent guidelines was inadequate (PC 2001).

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

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

In 2003 the Council assessed that the Australian Government had yet to meet its CPA clause 4 and 5 obligations arising from the Act.

On 24 December 2003 the Minister for Agriculture, Fisheries and Forestry initiated the 2004 Wheat Marketing Review as required under the Act. The review was conducted by an independent panel led by Ms Alice Williams. Its

focus was to assess the AWBI's performance as the commercial manager of the wheat export single desk and its obligations to maximise returns to growers and to examine the performance of the WEA. The review terms of reference stated:

> *Analysis of whether or not the single desk should continue is not within the scope of the review and the review is not intended to fulfil National Competition Policy requirements.* (Truss 2004)

The review delivered two reports — one for the Minister, containing commercially confidential information, and another summarising the panel's conclusions and recommendations. The latter, released on 15 October 2004, found that the current export consent system is not performing as effectively as it could and is unlikely to result in the best outcomes for the industry. It observed that returns to growers are unlikely to be maximised in this situation and that exporters other than AWBI need more confidence, certainty, timeliness and incentive to focus on market development.

In relation to bulk wheat exports the panel did not examine options for removing the veto power of AWBI, arguing that this is intrinsic to the single desk system, but did recommend that the AWBI and WEA ensure greater transparency and accountability in the exercise and monitoring of this power.

In relation to bagged and containerised wheat exports, the panel examined but did not support either the complete removal of the export control function or introducing a licensing scheme. It found that these changes could impact greatly on the pool and that significant legislative change would be required. Instead it recommended that the WEA adopt a longer-term consent system for bagged and containerised exports, involving:

- a streamlined application process — turning applications around within four days
- more consultation between the WEA and AWBI
- clearer rules, for example, clearer definitions of 'niche' products, more information on markets available to other exporters
- better prioritised monitoring of compliance with consent terms
- variable and lower consent fees.

The Minister for Agriculture, Fisheries and Forestry has said that the government will develop its response to the recommendations by late 2004, and has invited comments by 12 November 2004.

The Council looks forward to the Australian Government moving to increase the scope for effective competition in wheat export marketing via the export consent system. Such changes, while potentially significant, will not however be sufficient for the government to meet its CPA clause 4 and 5 obligations arising from the Wheat Marketing Act.

A4 Forestry

Export Control Act 1982 (relating to wood)

The Australian Government controls the export of wood and woodchips via Regulations under the Export Control Act: the Export Control (Unprocessed Wood) Regulations, the Export Control (Hardwood Wood Chips) Regulations 1996 and the Export Control (Regional Forests Agreements) Regulations. The regulations prohibit the export of:

- hardwood woodchip from public and private native forests unless:
  - from a region covered by a Regional Forest Agreement (RFA), or
  - the exporter holds a restricted shipment licence granted by the Minister on a shipment-by-shipment basis for woodchip from other regions
- other unprocessed wood from public or private native forests unless from a region covered by an RFA
- other unprocessed wood from plantations, whether hardwood or softwood, on private or public land, unless:
  - from a state or territory with a code of forest practice for plantation management that the Minister accepts satisfactorily protects environmental and heritage values, or
  - the exporter is the holder of a licence to export that wood granted by the Minister.

RFAs are agreements between the Australian and respective state governments to protect environmental and other values by maintaining a comprehensive, adequate and representative national forest reserve system and to give forest industries a firm base for investment. There are 10 RFAs in four states: Western Australia, Victoria, Tasmania and New South Wales.

In July 2001 the Australian Government completed the review of various regulations under the Export Control Act affecting wood. The review, principally by officials of the Department of Agriculture, Fisheries and Forestry (Australia), was unable to find any significant benefit from the regulations in encouraging either domestic processing or sustainable management of forests. It recommended (Standing Committee on Forests 1996) that the government:

- remove export controls on sandalwood
- remove export controls over plantation sourced wood if reviews of plantation codes of practice for Queensland and the Northern Territory find these codes meet National Plantation Principles

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

The government has agreed to remove controls on the export of sandalwood and is consulting with Western Australia on this matter. (Discussions are yet to take place with Queensland, the other state that exports sandalwood.) The government has agreed to remove export controls on plantation timber from the Northern Territory, and is finalising administrative procedures for this to occur. The removal of controls on the export of Queensland sourced plantation timber is subject to discussions later this year with the Queensland Government on a code of practice for plantation timber. Once such export controls are removed, the Australian Government intends to consider removing controls on the export of hardwood woodchip from non-RFA regions.

The Australian Government has not met its CPA clause 5 obligations arising from export controls on wood because reform of the controls is not yet complete.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Administration) Act 1992
Agricultural and Veterinary Chemicals Code Act 1994

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary chemicals, which covers the evaluation, registration, handling and control of these chemicals up to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority (formerly the National Registration Authority) administers the scheme. The federal Acts establishing these arrangements are the Agricultural and Veterinary Chemicals (Administration) Act and the Agricultural and Veterinary Chemicals Code Act. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral.

Reform of the federal Acts remains outstanding. Consequently, the delay has meant that reform of state and territory legislation that adopts the national code has not been completed. The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its reforms.

A6 Food

Imported Food Control Act 1992

The Imported Food Control Act and its associated Regulations enable the Australian Quarantine and Inspection Service to monitor and inspect

imported foods. The Australian Government reviewed the Act in 1998. The review concluded that the existing regulatory arrangements deliver a net benefit to the community and therefore should be retained. It also found, however, that the efficiency and effectiveness of the arrangements could be improved, such as by encouraging importers to take co-regulatory responsibility for food safety. The Government announced in June 2000 that it accepted all of the review recommendations. At the time of the 2003 NCP assessment, it had implemented eight of the 23 recommendations. The outstanding recommendations involve legislative change and major changes to information technology systems.

The necessary amendments to the Act were passed by Parliament in 2004. The Council assesses that the Australian Government has met its CPA obligations in this area.

A7 Quarantine and food exports

Quarantine Act 1908

The Australian Government administers Australia's quarantine arrangements under the Quarantine Act. In the 2003 NCP assessment, the Council found that the government met its CPA obligations relating to the human quarantine provisions of the Act.

The animal and plant health provisions of the Act have not been subject to NCP review, but the Australian Quarantine Inspection Service proposes to commence a comprehensive examination of these provisions following the resolution of a World Trade Organisation challenge. Any amendments arising from this review will be subject to analysis via a regulation impact statement.

Because the Australian Government has not completed its review and reform of the animal and plant health provisions of the Quarantine Act, the Council assesses that it has not met its CPA obligations in this area.

Export Control Act 1982 (relating to food)

The Export Control Act provides for the inspection and control of food and forest exports. (Section A4 of this chapter discusses review and reform activity relating to restrictions on competition in the export of forest products). The Act controls most food exports — fish, dairy produce, eggs, meat, fresh and dried fruits and vegetables. It restricts competition by requiring premises to be registered and to meet certain construction standards, and by imposing processing standards with attendant compliance costs and regulatory charges. These restrictions raise Australian food exporters' costs and may lead to forgone export sales, particularly where the requirements differ from those for domestic sales.

The Australian Government completed a two-year review of the Act, as it relates to food, in February 2000. The government decided in April 2002 to accept all review recommendations, and it is consulting with industry on timeframes for implementing the reforms. While considerable progress has been made, several complex issues in relation to both food and forest exports are yet to be resolved.

Because the Australian Government has still to implement the review recommendations, the Council assesses that it has not met its CPA obligations in this area.

A9 Mining

Aboriginal Land Rights (Northern Territory) Act 1976

In 1998 the Australian Government commissioned an independent review of the *Aboriginal Land Rights (Northern Territory) Act 1976* and Regulations. This legislation gives traditional Aboriginal owners the right to consent to mineral exploration. The review (released in August 1999) recommended retaining this right and removing other restrictions on consent negotiations. The government released an options paper on possible reforms in 2002; in response, the Northern Territory Government and the Northern Territory Land Council released a joint submission in September 2003 proposing reforms to the Act. The Australian Government is considering the final form of an Act to implement reforms.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed reform activity.

B5 Vehicle standards

Motor Vehicles Standards Act 1989

The Motor Vehicles Standards Act sets uniform standards to apply to road vehicles, with an emphasis on safety, emissions, anti-theft and energy savings. Following a 1999 review, the Australian Government changed the Act to limit imports of used vehicles (under the low volume scheme) to 'specialist' and 'enthusiast' vehicles, introduced a registered automotive workshops scheme, and required that imported used vehicles up to 15 years old be inspected and approved to ensure compliance with the appropriate national standards.

The review provided a public benefit argument for requiring vehicles to be inspected by registered workshops, but not for introducing the specialist and enthusiast vehicle scheme. The Council notes, however, that the Productivity

Commission's subsequent 2002 review of post-2005 assistance to the automotive industry recommended retaining restrictions on the importation of used vehicles while the vehicle manufacturing sector made the transition to a lower assistance environment. The Productivity Commission considered that unconstrained imports of second-hand vehicles would jeopardise the achievement of a viable domestic automotive production sector capable of operating in the long term without special treatment. The Council considers that the Productivity Commission's review accounts for the overall public interest and concludes that the Australian Government is therefore not in breach of its CPA obligations with respect to this legislation. The Council notes, however, that aspects of the regulatory arrangements for imports of second-hand vehicles are currently under review. The Council expects any changes to arrangements to be subject to the government's gatekeeping arrangements.

B6 Ports and sea freight

Navigation Act 1912

The Australian Government reviewed several laws relating to ports and shipping. Following a review of part VI of the Navigation Act in 1997, the government streamlined the processes for engaging in coastal trade but has not yet addressed its CPA obligations under those aspects of Part VI related to cabotage.

The 2000 review of all other parts of the Act recommended that Australia continue to base its regulation on internationally agreed standards, except where no international standard exists or where the Australian community expects standards to exceed international measures. The Australian Government advised that new shipping legislation cannot be developed until several substantial matters are resolved in consultation with the industry, the states and the Northern Territory to ensure adequate regulatory coverage and workable solutions. The government has had initial consultations with industry on proposed amendments to the Navigation Act, and it is preparing a draft Bill.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its review and reform of the Navigation Act.

Shipping Registration Act 1981

The Australian Government's 1997 review of the Shipping Registration Act (which provides for an Australian system of registering ships and mortgages on ships) recommended that Australia continue to legislate conditions for granting nationality to its ships in accordance with international conventions. The review made recommendations to improve the workings of this

legislation and to reduce compliance costs. The government approved Act amendments in 1998 to implement the review recommendations, but the amendments did not proceed. It reported to the Council that it is considering the review recommendations in the context of its review of broader shipping policy issues. The government has consulted initially with industry on proposed amendments to the Act, and it is preparing a draft Bill.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it has not completed its review and reform of the Shipping Registration Act.

C2 Drugs, poisons and controlled substances

Therapeutic Goods Act 1989

The terms of reference for the Galbally national review did not explicitly cover Australian Government legislation such as the Therapeutic Goods Act. The Council, therefore, acknowledges the Australian Government's view that the Galbally recommendations to modify federal legislation to improve legislative outcomes for state and territory governments represent best practice rather than a formal CPA obligation.

However, the Council considers that efficient outcomes are best served by all participating governments meeting the recommendations of the national review. Moreover, the terms of reference required the review to:

- have regard to '[n]ational uniformity of regulation and the administration of that regulation'
- address '[i]nterfaces with related legislation to maximise efficiency in the administration of legislation regulating this area.'

When coupled with specific Galbally recommendations relating to Australian Government legislation, and the Therapeutic Goods Act in particular, the Council has considered it appropriate to examine Australian Government progress in implementation of Galbally reforms as for other jurisdictions.

Following the review's outcome (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations. The Council of Australian Governments (CoAG) is considering the proposed response out of session.

In conjunction with implementing the Galbally review recommendations, the Australian Government has agreed to establish a joint agency (the Trans Tasman Therapeutic Products Agency) with New Zealand for the regulation of therapeutic goods. The establishment of the joint agency is separate to the Galbally review process. The new arrangements are expected to commence from 2005. Rather than reforming therapeutic goods legislation that is likely

to be repealed in 2005, the government considers that it will implement legislative change as part of the new trans-Tasman legislation.

The Council accepts that the Australian Government is considering the Galbally review recommendations through CoAG and in the context of new trans-Tasman legislation. However, the Council re-affirms its 2003 NCP assessment that the Australian Government has not yet implemented the requisite reforms.

C3 Restrictions on pathology services

Health Insurance Act 1973 (Part IIA)

Part IIA of the Health Insurance Act specifies that Medicare benefits are payable for pathology services if:

- the pathology service is requested by a registered medical or dental practitioner, and a clinical need is identified for the service
- the specimen is collected at an approved collection centre
- the services are provided by an approved pathology practitioner in an accredited pathology laboratory owned by an approved pathology authority.

A review of Part IIA of the Act recommended, among other things, that further reviews be undertaken to:

- review the current qualification requirements and the approval process for approved pathology practitioners
- examine the merits of extending requesting rights for pathology services to nurses and/or health workers in remote communities
- revise the accreditation requirements for pathology laboratories to place greater emphasis on quality assurance and public disclosure.

The review committee also found that the approved collection centre scheme may not be appropriate or sustainable in the longer term. However, given that the scheme had only recently been put in place, the committee recommended deferring further changes in this area until any benefits from the new arrangements had time to be realised.

In the 2003 NCP assessment, the Council accepted the public interest case for deferring further reforms to the approved collection centre scheme because the current scheme is being phased in over four years to December 2005. It considered that if the Australian Government were to accept the review recommendations and announce a review in 2005 of the regulations affecting

the approved collection centre scheme, then the government would comply with its CPA obligations.

In the context of this assessment, the Australian Government has advised that it has accepted key review recommendations and is progressing implementation. It has also advised that it intends to conduct and complete a review of regulations affecting the approved collection centre scheme later in 2005-06. This review will follow the completion in December 2005 of the phasing-in arrangements of the approved collection centre scheme. The *Pathology Quality and Outlays Memorandum of Understanding 2004/05-2008/09* (Pathology MoU) between the Australian Government and the pathology industry was signed in September 2004. Contained in the MoU is an agreement by both parties to undertake a review of the approved collection centre arrangements to ensure that these arrangements remain consistent with the objectives of competition policy and the review will be completed in 2005–06. The MoU is a public document and the Australian Government has advised that it will be available on the Department of Health and Ageing website in due course.

The Council notes that the government's acceptance of key review recommendations is consistent with its CPA requirements. However, it considers that the government should expedite implementation, given the lack of progress in progressing pathology reforms since the review's completion in December 2002. This implementation includes making legislative changes or commencing subsequent reviews of specific issues in line with review recommendations.

For the pending review of the approved collection scheme, the Council accepts that existing arrangements are still in a transitional phase and notes the government's decision to complete a review of the scheme in 2005-06. However, the Australian Government has not publicly announced a review with associated terms of reference. The Council notes that the Australian Government, to be assessed as compliant, must undertake a scheme review. The Council's compliance benchmark is a formal announcement of this review with appropriate terms of reference.

The Council thus assesses that the Australian Government has not yet met its CPA obligations in this area.

C4 Regulation of private health insurance — product controls

National Health Act 1953 (Part 6 and Schedule 1)
Health Insurance Act 1973 (Part 3)

Australian Government regulation prevents health funds from paying rebates for certain hospital services unless the services are provided by, or on behalf

of, medical practitioners, midwives or dental practitioners. This regulation restricts competition by preventing substitute health care providers (such as podiatrists) from negotiating with private health insurance funds to attract a rebate for their services. The Council raised this matter with the Australian Government in December 2000.

For the 2002 and 2003 NCP assessments, the Council was advised that the Australian Government Department of Health and Ageing was establishing trials to assess the suitability of including 'podiatric surgery' within the definition of 'professional attention' under the Health Insurance Act. This inclusion would allow podiatrists to negotiate with health funds to attract rebates for in-hospital podiatric surgery.

In the 2002 NCP assessment, the Council noted that as the trial process was incomplete, it would finalise its assessment of compliance with the CPA clause 5 guiding principle in 2003. Given that approval was sought in 2003 to commence the trials, the Council assessed the government's reforms in this area as incomplete for the 2003 assessment.

For this 2004 NCP assessment, the Australian Government has advised that product restriction regulations remain under consideration but that attempts to establish the podiatric trials have ceased. Instead, the *Health Legislation Amendment (Podiatric Surgery and Other Matters) Act* has been passed by Parliament and received royal assent on 13 July 2004. This Act removes any legislative impediment to health funds paying benefits, from their hospital tables, for accommodation and nursing care associated with in-hospital podiatric surgery by Australian Government accredited podiatrists. However, it does not extend to enabling funds to pay for the accredited podiatric surgeon's or associated anaesthetist's fees.

The Council considers that the proposed amendments represent only a partial response to product restriction controls. The amendments do not extend to cover the professional services of podiatric surgeons. Also, the legislation does not extend to other health professions not currently covered by the definition of professional attention. However, the Department of Health and Ageing has advised that representations from industry would be considered on an individual basis in line with the department's responsibilities for ensuring that any changes do not have a detrimental impact on the broader health system, including Medicare.

Given this, the Council considers that the Australian Government has not yet met its CPA obligations in this area.

F1 Workers' compensation insurance

Safety, Rehabilitation and Compensation Act 1988

Australian Government employees are covered by the monopoly compensation insurer, Comcare. The review of this arrangement was completed in 1997 and recommended introducing competition to Comcare. The government has not responded to the review, so no reforms have been introduced.

For reasons outlined in chapter 9, the Council has not assessed the Australian Government's compliance with its CPA obligations in this area for the 2004 NCP assessment.

F2 Superannuation

Superannuation Act 1976
Superannuation Act 1990
Superannuation Guarantee (Administration) Act 1992

Based on a review of Australian Government superannuation legislation in 1997, the government introduced amending legislation in 2001 to allow certain Australian Government employees to choose their superannuation fund. This legislation was defeated in the Senate. The government also introduced choice-of-fund legislation for the wider community in 1997 and 1998. This legislation too was defeated in the Senate in 2001.

A Superannuation Legislation Amendment (Choice of Superannuation Funds) Bill 2002 was introduced in June 2002. This Bill was passed by the House of Representatives on 5 December 2003 and by the Senate on 22 June 2004, and takes effect from 1 July 2005.

The Council assesses that the review and reform of this area of legislation complies with CPA obligations.

Superannuation Industry (Supervision) Act 1993
Superannuation (Self Managed Superannuation Funds) Taxation Act 1987
Superannuation (Self Managed Superannuation Funds) Supervisory Levy Imposition Act 1991
Superannuation (Resolution of Complaints) Act 1993
Occupational Superannuation Standards Regulations Applications Act 1992
Superannuation (Financial Assistance Funding) Levy Act 1993

In February 2001 the Australian Government requested that the Productivity Commission review a range of superannuation Acts, including the Superannuation Industry (Supervision) Act and the Superannuation (Self Managed Superannuation Funds) Taxation Act. The Productivity Commission was required to focus on those parts of the legislation that restrict competition. It finalised its report in December 2001 and made more than 20 recommendations about the prudential supervision and regulation of the superannuation industry. Importantly, the review found that most parts of the legislation that restrict competition are warranted to confine the execution of certain tasks to qualified professionals. The recommendations generally centred on simplifying the legislation to reduce compliance costs.

The Australian Government released its interim response to the review on 17 April 2002, agreeing to certain recommendations and delaying its final decisions on other recommendations until the report of the Superannuation Working Group (chaired by Mr Don Mercer) was finalised. After the Mercer report was completed, the government issued its final response to the Productivity Commission report on 20 June 2003, reporting that the government had commenced implementation of some of the inquiry recommendations. Exposure draft legislation was circulated to the superannuation industry, covering the licensing of all trustees of superannuation funds and the requirement for trustees to submit a risk management plan to the Australian Prudential Regulation Authority (APRA).

The government undertook action broadly consistent with the recommendations, including reviews of specific matters. It introduced the Superannuation Safety Amendment Bill 2003 to implement recommendations that all superannuation fund trustees be licensed and required to submit a risk management plan to APRA. Passed by Parliament on 10 March 2004, the Bill received royal assent on 27 April 2004.

The Council assesses that the Australian Government has met its CPA obligations to reform the superannuation legislation subject to review.

I3 Internet gambling

Interactive Gambling Act 2001

The Interactive Gambling Act makes it illegal to provide certain interactive gambling services, such as online poker machines and casinos. Other gambling services, such as interactive wagering and sports betting, are exempted from the Act and regulated by the states and territories. The Act was not included in the Australian Government legislation review schedule, but is subject to CPA clause 5(5) requirements for new legislation.

In the 2001 NCP assessment, the Council found that the government had not provided a net public benefit argument for the legislation. While the government stated that its objective is to minimise opportunities for problem gamblers to exacerbate their problems through ready access to online gambling, it did not address whether banning some forms of domestically sourced Internet gambling is the only way of achieving this objective.

The Australian Government has now reviewed the Act to consider the social and commercial impact of interactive gambling services, and the effectiveness of the Act in dealing with these effects. This work was not an NCP review with a primary focus on assessing the legislation against the CPA. The final review report (issued in July 2004) found that the benefits of interactive gambling services to consumers, government, industry and the economy are, on balance, likely to outweigh the costs (particularly those costs associated with problem gambling). The review examined methods of restricting access to Internet gambling and found that those relying on Internet filtering technologies would be costly and only partly effective. It also found that there would be small benefits from using the payments system to block illegal gambling transactions, but it did not account for implementation and administration costs, or for the effects on the efficiency of payments systems.

The legislation provides for competition in the permitted forms of interactive gambling, depending on the regulatory regimes established by the states and territories. The review did not assess the costs and benefits of the ban on certain forms of gambling; rather, it investigated how the ban should be implemented.

Given that the review did not address the principal restrictions on competition, the Council assesses that the Australian Government has not complied with its CPA clause 5(5) obligations. The Council accepts, however, that it may be difficult to meet the government's social policy objectives in other ways.

K Communications

Broadcasting Services Act 1992
Broadcasting Services (Transitional Provisions and Consequential Amendments) Act 1992
Radio Licence Fees Act 1964
Television Licence Fee Act 1964

The Broadcasting Services Act and related Acts embody ad hoc regulation that the Australian Government has established over time. It entails several restrictions on competition:

- The number of commercial free-to-air television broadcasters is restricted to three in any geographic area until at least the end of 2006, and the scope for new radio stations is also restricted.

- The commercial free-to-air television broadcasters are prohibited from multichannelling.[1] The multichannelling restrictions are intended to protect pay television operators from direct competition, but these operators are not allowed (under 'antisiphoning' rules) to broadcast major sporting events that free-to-air broadcasters wish to show. The antisiphoning rules, in turn, deliver a substantial market advantage to the existing broadcasters.

- Television broadcasters are required to simulcast both standard and high definition digital services, whereas standard definition has been considered satisfactory in other countries. Broadcasters are also required to simulcast both analogue and digital signals, which leaves little spectrum for new digital services. Because analogue television is much less efficient than digital television in its use of spectrum, the existing broadcasters account for most of the spectrum.

- Through program restrictions, the legislation restricts the ability of datacasters[2] to compete with broadcasters.

In its 2000 review of broadcasting, the Productivity Commission described the regulatory arrangements as a legacy of inward looking, anticompetitive and restrictive 'quid pro quos'. It argued that the government should close down analogue services as soon as possible, end the requirement for high definition digital broadcasting, relax the restrictions on datacasting and multichannelling, end the artificial distinction between datacasting and digital broadcasting and relax the antisiphoning rules (PC 2000).

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1 Multichannelling is the transmission of more than one stream of programming over a television channel.

2 A datacasting service delivers content as text, data, speech, music or other sounds and visual images.

The Productivity Commission also recommended that the government separate spectrum access rights from broadcasting licences and convert broadcasting licence fees to spectrum access fees. It further contended that the Australian Communications Authority should sell access to spectrum through a competitive bidding process, and that all broadcasting licence holders should pay fees based on their use of spectrum rather than on their revenue. These proposals would free up spectrum and make it possible for broadcasters to enter the industry. In this context, the Productivity Commission recommended removing the restrictions that prevent new broadcasters from entering the market before the end of 2006.

The Australian Government has made only limited responses to the inquiry report. The Australian Department of Communications, Information Technology and the Arts conducted a datacasting review during 2002 and, in releasing the December 2002 review report, stated that it 'there should be no change at this time to the rules relating to the content which can be provided under a datacasting licence' (DCITA 2002, p. 7). The government has since authorised limited datacasting 'trials'.

In May 2004 the Australian Government announced that it would conduct several reviews required under the Broadcasting Services Act. The first four reviews (outlined below) are to be completed by 1 January 2005.

1. Examine whether free-to-air broadcasters should be allowed to provide additional programming (including multichannelling) and offer other types of service (including pay television channels), and also consider whether the requirement for simulcasting analogue and digital signals should be amended or repealed.

2. Examine matters relating to the potential end (31 December 2006) of the moratorium on the issue of new commercial free-to-air television broadcasting licences.

3. Examine the efficient allocation of spectrum for digital television.

4. Report on whether provisions of the Broadcasting Services Act relating to underserved geographic areas should be amended or repealed.

The government further announced that it will conduct a review of high definition digital television requirements by mid-2005 and a review of the duration of the digital simulcast period by early 2006. Its recent announcements are the first significant policy developments that respond to the Productivity Commission review.

The Council assesses that the Australian Government has not met its CPA obligations in this area because it is yet to address the major restrictions on competition.

Radiocommunications Act 1992 and related legislation

The Radiocommunications Act is the primary legislation governing the use of the radiofrequency spectrum which is required for broadcasting and telecommunications services, and for community safety services. There are competing demands for radiofrequency spectrum (a limited resource) and the Australian Communications Authority conducts auctions for those parts of the spectrum that are particularly valuable to users. The authority also ensures sufficient spectrum is available for noncommercial organisations that fulfil a public good role, such as the defence forces and community services.

The Productivity Commission conducted an NCP review of the Radiocommunications Act and related Acts in 2001-02. The government released the final review report on 5 December 2002. The Productivity Commission (PC 2002b, pp. xxxi–xxxii) highlighted the need for the scarce spectrum resource to be used efficiently and in ways that do not restrict competition. To this end, it made several recommendations to enhance the role of the market in spectrum management. The government accepted most of these recommendations, but rejected six, of which the most significant related to the repeal of elements of the Radiocommunications Act that allow the Minister to impose limits on parts of the spectrum that a person may use. The government rejected this recommendation on the basis that the Act's provisions are 'strongly pro-competitive' and work in harmony with s50 of the Trade Practices Act.

Of the 35 recommendations that have been accepted, nine require legislative action to amend the Act. Work to draft the legislative changes started in early 2004. The government is considering the regulatory and budgetary implications of recommendations that relate to spectrum licensing.

The Council thus assesses that the Australian Government has not yet met its CPA obligations in this area because review and reform are incomplete.

Australian Postal Corporation Act 1989

Australia Post has a statutory monopoly in the provision of key 'reserved' services under the Australian Postal Corporation Act. These reserved services are:

- the collection and delivery of letters within Australia — the reserved service applies to letters up to 250 grams and for a fee that is up to four times the rate of postage for a standard postal article carried by ordinary post
- the delivery of incoming international mail.

The Australian Government sought to address the competition implications of the Act, including reserved services and the delivery of the universal service obligation (USO) whereby Australia Post is required to make the standard letter service available at a single uniform rate of postage for all Australians.

Australia Post funds the USO internally at an annual cost of around $90 million.

In 1997 the Australian Government requested that the Council review the Act. The Council's report was completed in February 1998, recommending that:

- Australia Post continue to provide the Australia-wide letter service, with unprofitable parts of this USO funded directly from the Budget
- household letters remain reserved to Australia Post, with a mandated uniform rate of postage
- open competition be introduced to the delivery of business letters
- all international mail services be open to competition
- the government regulate to ensure access on reasonable terms to Australia Post's community service obligation (CSO) and post office box services (NCC 1998b).

In July 1998 the Australian Government announced that it would reduce the scope of Australia Post's monopoly position. The Postal Services Legislation Amendment Bill 2000 was introduced to Parliament in April 2000 with the following principal features:

- Incoming international mail would no longer be a reserved service, and the protection afforded to Australia Post's domestic mail service would be reduced from 250 grams to 50 grams and from four times the standard postage rate to one times.
- A postal services access regime would be established under the Trade Practices Act.

The government withdrew the Bill in March 2001, however, in the face of opposition in the Senate. Then, on 14 November 2002 it announced a package of postal reforms that would partly address the recommendations of the 1998 NCP review. The subsequent *Postal Services Legislation Amendment Act 2004* was passed on 12 May 2004. The legislation provides for:

- expanded powers for the Australian Competition and Consumer Commission to inquire into disputes about the terms and conditions relating to bulk mail interconnection arrangements
- expanded powers for the Australian Communications Authority to cost Australia Post's CSOs and report on its quality of service and compliance with service standards
- the introduction of accounting transparency for Australia Post (by giving the Australian Competition and Consumer Commission the power to determine record-keeping rules for Australia Post) to assure competitors

that Australia Post is not unfairly competing by cross-subsidising its competitive services with revenue from reserved services

- the 'legitimisation' of 'document exchanges' (businesses that provide mail collection and delivery services for businesses) and 'aggregators' (businesses that sort the mail of smaller companies so it qualifies for Australia Post's bulk mail discounts).

The reforms in the Postal Services Legislation Amendment Act will have some pro-competitive impact. The Australian Communications Authority's monitoring of Australia Post's CSOs and service quality, however, does not compare with the enhanced quality of service that would be likely if Australia Post were subject to competition in the delivery of standard mail and incoming international mail. Nevertheless, accounting separation will be helpful to competitive neutrality outcomes, and the legitimisation of document exchanges will remove the risk of legal challenge to these entities although it will not represent an increase in competition to Australia Post.

The government is yet to address the major restrictions in the Australian Postal Corporation Act that relate to the monopoly that the Act accords Australia Post in the delivery of domestic business and incoming international mail.

The Council assesses that the Australian Government has not met its CPA obligations in this area because the reforms fall short of addressing the competition restrictions identified in the NCP review.

L Barrier assistance

Customs Tariff Act 1995 — automotive industry arrangements

The passenger motor vehicle industry operates under the Australian Government's post-2000 assistance arrangements, which run until 2005. Under these arrangements, a range of import tariffs apply, and financial assistance is delivered to automotive vehicle and component producers under the Automotive Competitiveness and Investment Scheme (ACIS).

In March 2002 the Australian Government referred the post-2005 assistance arrangements for the automotive manufacturing sector to the Productivity Commission for inquiry. The commission provided its final report in August 2002, proposing a series of tariff reform options. The inquiry established that the remaining restrictions — the temporary retention of higher tariff rates and transitional assistance for the automotive industry over the short to medium term — are in the public interest.

The government announced in December 2002 that it accepted the Productivity Commission's preferred option for tariff reform and chose an approach consistent with the commission's reform proposals for ACIS (rather

than one of the specific proposals). These recommendations were embodied in the *Customs Tariff Amendment (ACIS) Act 2003* and the *ACIS Administration Amendment Act 2003*, which were passed in October 2003.

The Council assesses that the Australian Government has met its CPA obligations in this area.

Customs Tariff Act 1995 — textiles, clothing and footwear

The key current assistance arrangements for the textile, clothing and footwear (TCF) industries comprise:

- the Textiles, Clothing and Footwear (Strategic Investment Program) Scheme (SIP), which provides grants for eligible investment in new and second-hand plant and equipment, research and development, production and ancillary activities related to restructuring

- a commitment to hold tariffs for TCF products at 2001 levels until 2005. From January 2005 the tariff will be phased down at differential rates depending on the nature of the product.

In November 2002 the Australian Government asked the Productivity Commission to provide policy options for post-2005 assistance for the TCF industry. The Commission provided its final report in July 2003. It noted that assistance reductions after 2005 would reinforce the competitive pressures on companies to improve their productivity, quality and delivery performance, to innovate, and to look for new markets.

While the Productivity Commission proposed a series of tariff reform options, its preferred approach was to maintain TCF tariffs at 2005 rates until 2010, and then reduce them to 5 per cent and maintain that rate until 2015. The exception was for apparel and certain finished textiles, for which the tariff would reduce to 10 per cent in 2010 and then to 5 per cent in 2015. The Productivity Commission considered that gradual tariff reduction would allow structural adjustment within the industry, with supported transitional assistance to buttress the tariff changes.

The government announced its response in November 2003. It accepted the recommendations relating to tariff reductions and included a $747 million package to assist the adjustment. This position is embodied in the Customs Tariff Amendment (Textile, Clothing and Footwear Post-2005 Arrangements) Bill 2004 and the Textile, Clothing and Footwear Strategic Investment Program Amendment (Post-2005 Scheme) Bill 2004, which were introduced into Parliament in June 2004.

The Council accepts that using the existing SIP arrangements to facilitate the transition to a lower tariff environment is consistent with promoting the long term public interest. It considers that the Productivity Commission's review indicates that the restrictions — the temporary retention of higher tariff rates

and transitional assistance for the TCF sector over the short to medium term — can be in the public interest.

Nonetheless, the Council assesses that the Australian Government has not yet met its CPA obligations in this area because it has not passed the relevant legislation.

Customs Tariff Act 1901 (Part XVB) and *Customs Tariff (Anti-dumping) Act 1975*

Following a review in 1996 (the Willett Review), the Australian Government amended the legislation on antidumping and countervailing measures in 1998. Key changes were the abolition of the Anti-Dumping Authority and streamlining of the antidumping and countervailing investigations to a single stage conducted by the Australian Customs Service.

The Australian Government committed to examining the impact and effectiveness of the new system as part of its review of antidumping and countervailing regulation under the CPA — a review that was scheduled to commence in 1997-98. The government postponed the review to allow full implementation of the new administrative arrangements.

Despite the new administrative arrangements having operated for seven years, the government has not made progress towards completing its review and reform of the competition restrictions contained in the Customs Act (Part XVB), and the Customs Tariff (Anti-dumping) Act.

In its 2003 NCP assessment, the Council assessed the Australian Government as not having yet met its CPA obligations in this area because review and reform were incomplete. Given the lack of progress since that time, the Council now assesses that the Australian Government has failed to meet its CPA obligations.