18 Northern Territory

A3 Fisheries

Fisheries Act

The 2003 National Competition Policy (NCP) assessment concluded that the Northern Territory had not met its Competition Principles Agreement (CPA) clause 5 obligation arising from the Fisheries Act, because the 2000 NCP review had recommended the removal of some restrictions on competition but the legislation was still to be reformed. Subsequently, the Fisheries Amendment Bill passed in May 2004 removed several restrictions. In particular, the amendments:

- clarified the stated objectives of the legislation
- replaced the prohibition on the issue of new fishery licences with a regular assessment of the sustainable level of licences for each fishery
- provided for the allocation of any new licences on an open and competitive basis
- removed the prohibition on foreign ownership of licences.

Some recommendations for reform are being implemented via the review of other regulatory instruments. The government is progressively reviewing all fishery management plans, for example, beginning with Spanish mackerel, mud crab and barramundi, to assess whether input controls can be replaced by individual transferable quota. The government is also:

- reviewing restrictions on the transferability of licences in the aquarium display, Timor reef and demersal fisheries
- committed to recovering fishery management costs from licence holders, and recently increased some fees and introduced a fee for fishing tour operators
- increasing resources allocated to the enforcement of fishery controls.

The government has rejected several recommendations for reform following further consideration of the public interest. These include the recommendations to issue fishery licences indefinitely, to allow the transfer of development licences, to allow the re-sale of fish and to introduce licensing of amateur (recreational) fishers. The Council is satisfied that these provisions

do not restrict competition to a material degree and/or that they are necessary for enforcement purposes.

In 2003 the Council urged the Northern Territory Government to reconsider the NCP review finding of a net public benefit from restricting competition in the pearl oyster hatchery industry via hatchery quotas. The NCP review of the Western Australian pearl industry regulation, which is similar to the Northern Territory regulation, found no demonstrable net public benefit from retaining the hatchery policy, notwithstanding a pro-quota submission prepared (on behalf of the Pearl Producers Association) by the same consulting firm that undertook the Northern Territory's NCP review. The Northern Territory Government has declined to resubmit the pearl oyster hatchery quota to NCP review.

The Council assesses that the Northern Territory has made substantial progress but has yet to fulfil its CPA clause 5 obligations arising from the Fisheries Act. To fulfil these obligations, the Northern Territory needs to:

- announce firm outcomes from the review of management plans for the Spanish mackerel, barramundi and mud crab fisheries, adopting individual transferable quota except where this is clearly shown not to be in the public interest
- remove the remaining restrictions on the transfer of licences in the aquarium/display, Timor reef and demersal fisheries, or show that the retention of these restrictions is in the public interest
- remove the pearl oyster hatchery quota or show, via a new open and independent NCP review of the restriction, that it is in the public interest.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (Northern Territory) Act

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of agvet chemicals to the point of retail sale. The Australian Pesticides and Veterinary Medicines Authority administers the scheme. The Australian Government Acts establishing these arrangements are the *Agricultural and Veterinary Chemicals (Administration) Act 1992* and the *Agricultural and Veterinary Chemicals Code Act 1994*. Each state and territory adopts the Agricultural and Veterinary Chemicals Code into its own jurisdiction by referral. The relevant Northern Territory legislation is the Agricultural and Veterinary Chemicals (Northern Territory) Act.

The Australian Government Acts were subject to a national review (see chapter 19). Because the Australian Government has not completed reform of

the national code, the reform of state and territory legislation that automatically adopts the code has not been completed, and the Council thus assesses that the Northern Territory has not met its CPA obligations in relation to this legislation.

Poisons and Dangerous Drugs Act

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

The Northern Territory did not list the agvet chemicals 'control of use' provisions in its Poisons and Dangerous Drugs Act for NCP review. However, the *Agricultural and Veterinary Chemicals (Control of Use) Act 2004* will repeal these provisions. It controls the use of agvet chemicals, fertilisers and stock foods, and brings the Northern Territory's arrangements into alignment with those of other jurisdictions. The Act passed Parliament on 18 May 2004 and was assented to on 4 June 2004, but had not commenced at the time of this assessment.

The Council assesses the Northern Territory as having met its CPA obligations in this area.

A6 Food

Food Act 1986

The major reviews of food production, processing and distribution were outlined in the Council's 2003 NCP assessment. Arising from these reviews, the Australian Government developed the *Food Standards Australia New Zealand Act 1991* and the joint Food Standards Code (renamed the Australia New Zealand Food Standards Code in 1995).

In November 2000, the Council of Australian Governments (CoAG) signed an Intergovernmental Food Regulation Agreement. Under the agreement, the states and territories undertook to make their food legislation consistent with the core provisions of the model food Act within 12 months. The core provisions relate mainly to food handling offences and to the adoption of the Food Standards Code. Adoption of the noncore provisions is voluntary. States and territories may also retain provisions in their legislation that do not conflict with the enacted provisions of the model food Act.

In February 2004, the Northern Territory passed the Food Act that adopts the model Act, so the Council assesses the Northern Territory as having met its CPA obligations in this area.

A8 Veterinary services

Veterinarians Act

The Northern Territory completed the review of its Veterinarians Act in 2000. The review recommended:

- retaining licensing, the reservation of title and the reservation of practices
- increasing the number of nonveterinarian representatives on the Veterinary Board from one to at least two of the board's five members
- removing restrictions on the advertising of fees and discounts.

The Northern Territory subsequently advised that the Veterinarians Act has been amended to increase the nonveterinarian representation on the Veterinarians Board and to allow a nonveterinarian to become president, and that the Regulation restricting advertising has been repealed.

The Council thus assesses the Northern Territory as having met its CPA obligations in this area.

A9 Mining

Mining Act 1980

The Northern Territory's principal mining legislation is the Mining Act, which prohibits exploration and extraction activity without a licence or similar authority. The government completed a review of this Act and announced its response to the review recommendations. Five recommendations require amendments to the Act, four require discussion with the industry before any further action, and four require development of the supporting public interest arguments.

An amending Bill incorporating the review recommendations that require a legislative response was passed by Parliament in February 2004. Further, the mining industry has been consulted on the review recommendations that specifically call for discussions with the industry. In response, the industry expressed the view that these matters should be addressed in the broader context of a current departmental review of the Mining Act. The government has provided a public interest case to support its position on each of the rejected review recommendations as follows:

- Recommendation 4 — introduction of negotiated exploration licence terms

  The government considers that the costs of this approach would outweigh the benefits. It points out that the Northern Territory exploration

licensing arrangements are generous compared with those of other jurisdictions, and that fixed terms provide explorers and investors with a degree of certainty about clearly delineated rights. In addition, fixed terms ensure a turnover of exploration areas, allowing explorers with different technologies to access areas.

- Recommendation 6 — abolition of exploration licence relinquishment provisions

  An exploration licence is granted for six years with part relinquishment commencing after two years and continuing until the term expires. This recommendation follows from recommendation 4, in that relinquishment provisions are no longer appropriate where explorers negotiate the term of the exploration licence. The government, however, views relinquishment provisions as an integral part of the fixed term framework and as an incentive for explorers to act decisively on their holding, according to their stated management plans and the terms of the grant.

- Recommendation 7 — provision of compensation for compulsory surrender of licence

  The review recommends that miners, if they are required to surrender an exploration licence or if the licence is cancelled, should be compensated for the full market value of their loss. The government considers that this approach would present significant practical problems in terms of resource ownership, assessment method and uncertainty.

- Recommendation 12 — removal of the power to force development

  Consistent with its recommendation 4, the review advocates abolishing the power of the Minister to force development. The government, however, contends that there is considerable scope for industry participants to engage in anticompetitive conduct in the early stages of mining without the existing provisions applying to exploration activity. Such conduct could impose significant economic costs on the community by unduly restricting access to mineral resources and by deferring economically viable resource development.

The Council accepts the government's case and assesses that the Northern Territory has met its CPA obligations in relation to mining.

B1 Taxis and hire cars

Commercial Passenger (Road) Transport Act

The Commercial Passenger (Road) Transport Act allows the government to set the number of taxi and hire car licences. In 1999 the government removed

the restrictions on taxi and hire car numbers, and introduced a buy-back program for existing plates. In the 2001 NCP assessment, the Council thus assessed that the Northern Territory had complied with its NCP obligations.

Subsequently, in November 2001 the government imposed a temporary (initially six month) cap on the number of taxi, hire car and minibus licences, which was still in place when the 2002 NCP assessment was completed. The Council concluded in that assessment that the Northern Territory would no longer comply with CPA obligations if it introduced new restrictions on competition (particularly in relation to taxi and hire car numbers) without adequate public interest justification.

In October 2002 the government announced that it would remove the temporary cap in December 2002 (subsequently extended to February 2003), and that minibuses would be allowed to respond to street hails. Parliament passed legislation that established a category of executive taxis and limousines (higher standard taxis and hire cars respectively) in early 2003.

On 3 June 2003 the Minister for Transport and Infrastructure announced that the number of taxi licences would be capped in Darwin and Alice Springs, to accommodate industry concerns. Despite the increase in taxi numbers following earlier reforms, the caps result in a significant restriction on taxi numbers. They fix the taxis-to-population ratio at 1:900. The Council's 2003 NCP assessment reversed the 2001 compliance recommendation, finding that the restriction on competition re-introduced by the caps meant that the Northern Territory was no longer compliant with its CPA clause 5 obligations for taxis.

In September 2003, the government allowed minibuses to respond to hails, and to rank at bus stops (minibus ranks were already in place). These changes enhanced the capacity of minibuses to offer services similar to taxis. This reinforced the positive impact on taxi services arising from the removal of entry restrictions in 1999, although the numbers of taxis and commercial passenger vehicles overall have fallen somewhat since the cap was introduced in 2003. The number of taxis in Darwin increased from 88 in 1998 to 135 in 2000, before falling to 122 in 2003 and 113 in March 2004. There has been a broadly similar pattern in Alice Springs taxi numbers. (There are approximately 25 minibuses in Darwin, and a little under 20 in Alice Springs.)

In introducing the 2003 changes to policy, the government committed the Commercial Passenger Vehicle Board to review the Darwin and Alice Springs caps in May 2004. The Council understands from discussions with officials that the board has completed the report and, as at September 2004, the government was considering the options proposed in it.

Given this consideration, the Council finds that review and reform activity in the area of taxis and hire cars is incomplete.

C1 Health professions

Health Practitioners and Allied Professionals Registration Act 1985

The key recommendations of the Northern Territory review of the Health Practitioners and Allied Professionals Registration Act, which registers chiropractors, occupational therapists, osteopaths, physiotherapists and psychologists, were:

- to continue reserving the use of professional titles for registered practitioners, but making entry requirements more flexible and clarifying personal fitness criteria

- to give the professional boards the ability to restrict treatments or procedures that have a high probability of causing serious damage, if those procedures are likely to be performed by people without the appropriate skills and expertise.

The review was completed in 2000. The government at the time accepted the review recommendations and determined in 2001 that the current legislation regulating health professionals would be repealed and that an omnibus Act would be created to replace the existing Acts. This position was subsequently endorsed in 2003 and approval was given for drafting of the new legislation.

In the 2003 NCP assessment, the Council noted that these recommendations, (except the recommendation to retain title protection for occupational therapists) were consistent with competition policy objectives. Nonetheless, the Council assessed the Northern Territory's progress in reforming the relevant professions as being incomplete because the review recommendations were yet to be implemented.

The Health Practitioners Act 2004 which broadly incorporated the review recommendations was passed in April 2004.

On 8 October 2004, the Council Secretariat met with the Northern Territory's Department of the Chief Minister, Northern Territory Treasury and other government representatives. At this meeting, the Council Secretariat sought clarification on whether, under the legislation, boards may introduce new anticompetitive requirements through codes, including relating to practice restrictions. The Council received advice that the ability of boards to introduce new restrictions was circumscribed under the Act. The Northern Territory's Health Professions Licensing Authority has also separately advised that codes will be reviewed on an annual basis.

Given this, the Council considers that the Northern Territory has met its CPA obligations in relation to these professions, except for occupational therapists. However, the Council notes that this position is based on the Northern Territory's ongoing compliance with CPA clause 5(5) requirements.

For occupational therapists, the review considered that title protection has the potential to reduce risk and costs to the government from service users inappropriately choosing unqualified health care providers. It concluded that restricting the use of professional titles for occupational therapists provides a net public benefit, so long as the costs of operating the registration system are modest. The review did not, however, link the generic benefits of title protection to occupational therapy services in particular.

As noted in the 2003 NCP assessment, the Council doubts the review's public interest reasoning for retaining registration for this profession. In particular, it questions the strength of the evidence that significant consumer protection benefits arise from reserving the 'occupational therapist' title. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as common law, the *Trade Practices Act 1974* and independent health complaints bodies, and there does not appear to be an increased risk of harm to patients in these jurisdictions.

Nonetheless, while the Northern Territory has failed to meet its CPA obligations in relation to occupational therapists, the Council notes that the retention of title protection does not have a material impact.

Dental Act 1986

The Northern Territory's review of the Dental Act was completed in 2000 and recommended removing ownership restrictions and amending reserved practice to protect mobility between oral health professionals. The government accepted the review recommendations and approved drafting of an omnibus Bill in 2003 to implement the reforms. In its 2003 NCP assessment, the Council considered that the proposed reforms were consistent with CPA principles, but assessed the Northern Territory's reforms in this area as being incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioner's Bill 2003, which was passed in April 2004, implements review recommendations relating to the dental profession. The Northern Territory has thus met its CPA obligations in relation to this profession.

Medical Act 1995

The Northern Territory's review of its Medical Act recommended, among other things, removing reservations of practice, but empowering boards to restrict treatments or procedures that have a high probability of causing serious damage. It also recommended removing advertising and ownership restrictions. The government accepted the review recommendations for the medical profession, and approved drafting of an omnibus Bill in 2003 to implement the reforms. The Council's 2003 NCP assessment considered that the proposed reforms were consistent with CPA principles, but assessed the

Northern Territory's reforms in this area as incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioners Registration Bill, passed in April 2004, incorporates the review's recommendations. The Northern Territory has thus met its CPA obligations in relation to medical practitioner legislation.

Nursing Act

The Northern Territory accepted the recommendations of a review into the Nursing Act, including the recommendation to remove the reservation of practice (but to empower the Nursing Board to restrict certain treatments or procedures that have a high probability of causing serious damage). The review also recommended removing advertising restrictions.

Consistent with the proposed reforms for the above professions, the government accepted the review recommendations and approved drafting of an omnibus Bill to implement the reforms. In its 2003 NCP assessment, the Council considered that the proposed reforms were consistent with CPA principles but assessed the Northern Territory's reforms in this area as being incomplete because the relevant legislation had not been implemented.

The Northern Territory's Health Practitioners Registration Bill, passed in April 2004, incorporates the review's recommendations. The Northern Territory has thus met its CPA obligations in relation to nursing legislation.

Optometrists Act

The Northern Territory review of the Optometrists Act in 2000 recommendations included:

- modifying restrictions on practice to allow the Optometrists Board to authorise any person (regardless of professional classification) to practise aspects of optometry if they demonstrate competence

- removing ownership restrictions.

As for other health professions, the government accepted the review recommendations and approved drafting of an omnibus Bill to implement the reforms.

The Health Practitioners Bill 2003, passed in April 2004, incorporates the review recommendations. The Northern Territory has thus met its CPA obligations to review and reform its legislation regulating optometrists.

Pharmacy Act 1996

CoAG national processes for reviewing pharmacy regulation recommended that jurisdictions remove restrictions on the number of pharmacies that a pharmacist can own and allow friendly societies to operate in the same way as other pharmacies (see chapter 19). Further, while the Wilkinson review commissioned by CoAG provided that pharmacies should continue to be owned and operated by pharmacists, it noted:

> … *[w]here a jurisdiction's regulation does not extend as a far as the Review's recommended line, that jurisdiction should not be compelled to extend that regulation*. (Wilkinson 2000, p. 19)

The Northern Territory's Pharmacy Act does not contain restrictions on how many pharmacies a pharmacist can own. It also does not rule out the ownership of pharmacies by persons other than pharmacists (Wilkinson 2000, p. 196).

In the context of the 2003 NCP assessment, the Department of Health and Community Services advised the Council that the government intended to introduce ownership restrictions on pharmacies, with some discretion for the Minister to grant exemptions to this restriction.

These amendments, if implemented, would not have been consistent with the outcomes of the Wilkinson Review, as they would impose restrictions where none existed. Given these pending changes, the Council assessed the Northern Territory's progress in reviewing and reforming pharmacy regulation as being incomplete. The Council also looked for the Northern Territory to provide additional evidence that the benefits of restricting ownership outweigh the costs.

On 1 April 2004 the Northern Territory passed the *Health Practitioners Act 2004*, but the specific provisions pertaining to pharmacy ownership in schedule 8 did not commence with the rest of the Act. This schedule restricts the ownership and control of pharmacies (subject to several exceptions) to pharmacists or business entities owned and controlled by pharmacists. Further, the schedule provides that the Minister cannot grant an exemption to friendly societies unless doing so:

- will improve health services or access to health services
- will meet the needs of the community where the pharmacy business is situated.

On 3 February 2004 the Council advised the Northern Territory of its obligations under CoAG national processes. It also emphasised that the Northern Territory should consider introducing a restriction on pharmacy competition (where one does not exist) only if there is clear evidence that this would be in the public interest.

Consistent with this advice, the Northern Territory has reviewed these provisions in accordance with a Terms of Reference that incorporates the comments of the Council.

Given the comprehensiveness of the Wilkinson Review and the subsequent CoAG working group consideration of ownership restrictions, the Council considers that the Northern Territory should not introduce ownership restrictions. A Northern Territory review finding to the contrary would need to rigorously demonstrate the analytical shortcomings of the outcomes of CoAG national processes.

However, following a letter from the Prime Minister stating that no penalty would attach to the introduction of new restrictions on competition, the Territory Government advised that its independent review report would probably not be released.

It appears that the Northern Territory will now introduce new restrictions that, on evidence to date, serve the interests of a vested group rather than the community and are inconsistent with CoAG outcomes. Currently, the Council assesses that the Northern Territory has not yet met its CPA obligations. If schedule 8 commences, the Northern Territory will be assessed as failing to comply with its CPA obligations.

Radiographers Act

The Northern Territory was the only jurisdiction with dedicated radiographer legislation that had not met CPA requirements at the time of the 2003 NCP assessment. The Northern Territory has since passed the Radiation Protection Bill, which repeals the Radiographers Act and transfers the registration and licensing powers of persons using a radiation source to the Chief Health Officer, consistent with CPA requirements.

The Northern Territory has thus met its CPA requirements to review and reform legislation regulating radiographers.

C2 Drugs, poisons and controlled substances

Poisons and Dangerous Drugs Act
Therapeutic Goods and Cosmetics Act
Pharmacy Act

Following the outcome of the Galbally Review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review recommendations. CoAG is now considering the proposed response out of session. The Northern Territory has advised that it intends to implement review recommendations once CoAG endorsement takes place. Amendments of the Poisons and Dangerous Drugs Act and the Therapeutic Goods and

Cosmetics Act are included in the Northern Territory's 2004 legislative program for commencement on or about 1 July 2005.

The Council accepts that jurisdictions are considering the Galbally Review at the national level through CoAG. However, because the Galbally reforms have not yet been implemented, the Northern Territory has not yet met its CPA obligations in this area.

D Legal services

Legal Practitioners Act

The Northern Territory review of the Legal Practitioners Act made recommendations, including that:

- areas of work reserved for legal practitioners should accord with areas of work reserved on a national basis (that is, appearances in court, probate work and the drawing up of wills and documents that create rights between parties, except conveyancing)
- the provisions that prohibit barristers from acting independently of one another should be repealed, but barristers should continue to be subject to regulations suitable to that kind of sole practice.

The Northern Territory government decided to implement outstanding review recommendations in conjunction with national model laws (see chapter 19). Model laws are expected to be implemented in 2005 following consultation. The issues not addressed in the model legislation are to be addressed in separate legislation which is being developed concurrently. The Northern Territory will also consider its legal professional indemnity regime in the context of national model law processes underway.

The reforms recommended by the review of the Legal Practitioners Act are consistent with CPA principles, but yet to be implemented. For this reason, the Northern Territory has not yet met its CPA clause 5 obligations in relation to the legal profession.

E Other professions

Consumer Affairs and Fair Trading Act (travel agents)

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a Ministerial council working party, to review legislation regulating travel agents. The

recommendations of the review were not ultimately accepted by the working party. More detail is provided in chapter 19.

The Northern Territory has advised that it has not implemented most of the provisions identified in the national NCP review as anticompetitive (for example, the provisions relating to the travel compensation fund). However, the government has formed an advisory committee which released an issues paper early in 2004. Noting that the Northern Territory does not currently require travel agents to participate in the travel compensation fund, the advisory committee will address whether the government needs to enact new legislation providing for compensation to clients of licensed travel agents. Any competition restrictions introduced as a result of new legislation will be subject to the Northern Territory's competition impact analysis process.

The Council assesses the Northern Territory as not having met its CPA clause 5 obligations in relation to travel agents legislation because it has not completed its reforms.

F1 Compulsory third party motor vehicle insurance

Territory Insurance Office Act
Motor Accidents (Compensation) Act

The Territory Insurance Office is the monopoly provider of compulsory third party motor insurance in the Northern Territory. The government completed a review of its compulsory third party insurance legislation in late 2000 and is considering the recommendations. This review of the Motor Accidents (Compensation) Act concluded that the legislation is consistent with the Northern Territory's NCP obligations and argued for retaining the monopoly arrangements. The government has commissioned a review of options for the future ownership and management of the motor accidents compensation scheme. The review is scheduled for completion in late 2004.

For reasons outlined in chapter 9, the Council has not assessed the Northern Territory's compliance with its CPA clause 5 obligations in this area for the 2004 NCP assessment.

G2 Liquor licensing

Liquor Act

The Northern Territory's Liquor Act and Liquor Regulations contained a public needs test that required the licensing authority, when determining applications for a new licence, to consider whether existing sellers could meet

consumer needs. In addition, the Act discriminates between hotels and liquor stores in Sunday trading: liquor stores are prohibited from trading on Sundays whereas hotels may open from 10 am to 10 pm.

The Liquor Act review has been finalised and submitted to government for consideration. In September 2003, the government announced its response to the review. Of the review's 29 recommendations (17 of which required legislative amendments), 27 were endorsed by the government and the required amendments were passed in March 2004. Among the amendments is the replacement of the needs test with a 'public interest' test. This change effectively removes competition with surrounding outlets as a factor preventing the grant of new licences. The licensing criteria now focus on public amenity/harm minimisation issues.

The government did not accept the review's recommendation about the wording of the objectives of the Act, preferring alternative (but consistent) wording to that recommended. The only outstanding review recommendation, therefore, is the removal of the discriminatory restriction on packaged liquor trading, which allows only hotels to sell packaged liquor on Sundays.

Relevant to the Sunday packaged liquor trading restriction has been the government's development of a comprehensive Alcohol Framework to deal with the antisocial impacts of alcohol consumption. It considers this framework to be critical for a concerted focus on one of the Northern Territory's major problem areas:

- The Northern Territory's per person consumption of alcohol is 70 per cent higher than the national average.

- The tangible costs incurred to deal with alcohol problems in the Northern Territory add to more than two-and-a-half times the amount spent by other jurisdictions on a population basis.

- Alcohol is the major substance abuse issue for Indigenous communities and is strongly linked to the increasingly poor state of the health, social and cultural circumstances of these communities.

The alcohol framework report was published in July 2004. It recommended deferring the extension of Sunday trading to liquor stores for twelve months following implementation of the alcohol framework, to assess if its proposals (particularly on the sale of cheap high alcohol products) had been effective. It further recommended a removal of the prohibition on Sunday trading by liquor stores if there has been a significant decline in alcohol sales and/or other evidence that Sunday trading by particular stores will not exacerbate alcohol related harm.

In correspondence to the Council, the government stated that it has rejected the recommendations of the alcohol framework and will retain the existing Sunday trading arrangements. The government states that the Northern Territory has high levels of alcohol abuse which, coupled with high levels of itinerancy, generate substantial social costs. It maintains that the restriction

of Sunday packaged liquor sales to hotels, taverns and clubs is an effective strategy for reducing these costs for the following five reasons:

1. Hotels, taverns and clubs provide extensive facilities for the consumption of alcohol on site, with takeaway sales usually representing a relatively lower proportion of sales.

2. Hotels and taverns specialise in the sale of alcohol and therefore managers and employees have greater awareness of, and are generally better trained in, responsible sale of alcohol practices.

3. Supermarket based liquor outlets deal only with takeaway sales and licensees are usually not subject to the same level of regulatory oversight as hotel based employees.

4. Alcohol related health and crime statistics are historically lower on Sundays.

5. Restrictions on takeaway sales (by hours of operation and product type) in regional centres have proven to be successful in terms of reducing antisocial behaviour.

The Council has previously stated its support for restrictions on alcohol availability which do not discriminate between sellers. Arguments four and five suggest that there is considerable merit in restricting, or even completely prohibiting, Sunday packaged liquor sales by all sellers. They do not, however, support restricting Sunday trading by liquor stores while allowing hotels, taverns and clubs to sell packaged liquor. The first argument applies to on-premises consumption, but does not appear relevant to packaged liquor sales, which by their nature are intended for consumption away from on-site facilities.

The government's public benefit case thus rests on the second and third arguments: that hotel licensees and employees are more responsible sellers than liquor store licensees. The Council considers that evidence supplied by the government does not support such a generalisation. The government cites 'more' public complaints about liquor stores and a Darwin store's loss of licence following irresponsible selling practices — which of itself indicates that these problems can be addressed without discriminatory restrictions on competition. Indeed,

> *many take away outlets have instituted policies and practices to deter sales to itinerants and prevent sales to intoxicated people. Some examples of these practices are; drive through bottleshops refusing to sell alcohol to people on foot, employing Aboriginal liaison staff and limiting the range of alcohol products for sale. Licensees reportedly make these changes because of genuine concerns about antisocial behaviour, and because of the effect of itinerant behaviour on their staff and their business.* (Townsend and Renouf 2004, p. 9)

The Council considers that uniform trading conditions should apply to all sellers of packaged liquor, even to the extent of a prohibition on Sunday sales. At the very least, justifiable concerns about the harmful impact of Sunday packaged liquor sales imply that it would be appropriate for the government to require all sellers to demonstrate, as a condition of their licence, that Sunday packaged liquor trading will not adversely affect neighbourhood amenity or contribute to alcohol related harm. The Council also supports rigorous enforcement of responsible service requirements on all packaged liquor sellers.

The Council notes that the Northern Territory has demonstrated substantial review and reform progress since the 2003 NCP assessment, particularly by removing the needs test, the major restriction in its legislation. The Council assesses the Northern Territory's public interest test for new licence applications as complying with CPA obligations. However, the Northern Territory has rejected the recommendations of its review and its alcohol framework and retained discrimination between sellers in trading hours without providing a convincing public interest case.

The Council accepts the Territory Government's reluctance to allow a very significant increase in availability of liquor on Sundays through an increase in the number of outlets permitted to open on that day. However, the evidence for retention of the discriminatory provisions as the means of limiting availability is unconvincing. In particular, the Northern Territory failed to consider alternative measures to limit the availability of alcohol and the relative effectiveness of these alternatives and their implications for competition. For example:

- allowing all liquor outlets to trade on Sundays but for a more restricted period than the current 12 hours
- instituting a roster system that retains the current number of sellers on Sundays but allows all incumbents the opportunity to trade
- instituting bans on particular beverages shown to cause greatest harm
- banning all packaged liquor sales on Sundays regardless of outlet type.

The above examples need not be mutually exclusive and the Council understands that some of these non-discriminatory approaches are used in various parts of the Northern Territory.

The Council thus assesses that the Northern Territory has not met its CPA obligations for liquor licensing.

H3 Trade measurement legislation

Trade Measurement Act

Each state and territory has legislation that regulates weighing and measuring instruments used in trade, with provisions for prepackaged and non-prepackaged goods. Regulated instruments include shop scales, public weighbridges and petrol pumps. State and territory governments (except Western Australia) formally agreed to a nationally uniform legislative scheme for trade measurement in 1990 to facilitate interstate trade and reduce compliance costs (see chapter 19).

Because the national review and reform of trade measurement legislation has not been completed, the Northern Territory is yet to meet its CPA obligations for trade measurement legislation.

I1 Education

Education Act (higher education)

The Northern Territory did not include its Education Act (which regulates higher education) on its original NCP legislation review program. It did, however, review s73A of the Act to determine whether any changes were required to reflect the National Protocols for Higher Education Approval Processes that determine the conditions under which universities operate. The review identified areas in which the Act should be amended, and the *Higher Education Act* which implements the review recommendations received assent on 4 June 2004.

The Council thus assesses the Northern Territory as having met its CPA clause 5 obligations in this area.

I2 Child care

Community Welfare Act

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
- 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 the reforms in isolation and with limited public consultation and decided to undertake the reforms as part of a broad early childhood strategy. The Northern Territory's 2004 NCP annual report has advised that the amendments to the Community Welfare Act will now take place in one stage, not two as previously advised. The government anticipates that a discussion draft of the Bill will be tabled in November 2004 and introduced in March/April 2005.

The Council thus assesses the Northern Territory as not having met its CPA clause 5 obligations because the government has not completed the reform process in this area.

I3 Gambling

Gaming Control Act and regulations
Gaming Machine Act and regulations

A review of these Acts was completed in September 2002. The review covered casino licensing, the operation of gaming machines in casinos, clubs and hotels, and arrangements for the conduct of lotteries and minor gaming.

Casino regulation

The Council has previously noted that the Northern Territory has encouraged casino operators to relinquish their exclusive licences. The review recommended that existing casino licensing arrangements continue for the duration of current licences unless anticompetitive restrictions can be removed without significant penalty to the government. The review also recommended a regular review of licensing arrangements in the light of the Northern Territory's economic growth and market expansion, so as to negotiate the restriction's removal as sufficient net public benefits become available.

The government has accepted all major recommendations of the review. In the case of casinos, no legislative change will be necessary, so the Council assesses the Northern Territory as having met its CPA obligations in relation to casino regulation.

Gaming machine regulation

The government accepted the major recommendations of the review in relation to gaming machines, which included:

- the adoption of revised legislative objectives
- the continuation of licensing for industry participants, but with increased standardisation and simplification of licensing arrangements where possible
- the removal of a requirement that a take-away liquor licence be held as a condition for the operation of gaming machines
- the continuation of the absolute limit on the number of non-casino gaming machines, but with a regulatory definition of the formula used to calculate the limit
- the retention of differential gaming machine limits for clubs (45 machines) and hotels (10 machines). The review considered that to increase caps on hotels to levels similar to those applying to clubs would substantially increase access to gaming machines and would likely contribute to increased problem gambling.

The Northern Territory subsequently advised that altering regulatory provisions to include the formula for the global cap on gaming machines proved problematic, and the recommendation has not been implemented. The government has introduced measures to safeguard against a proliferation of gaming machines once the take-away liquor condition is removed as the filter for determining which hotel venues may apply for a gaming machine licence. Amending legislation which more clearly defines the outlet types that can apply for gaming machines, requires a community impact analysis to be undertaken, and lists density and harm related criteria that the Licensing Commission must consider when assessing applications, was assented to on 1 September 2004.

The Council, while concerned about the continuation of differential venue caps, recognises that increasing hotel machine numbers would add considerably to the number of machines in operation with potential for increased harm.

The Council assesses that the Northern Territory has complied with its CPA obligations in relation to gaming machines.

Totalisator Licensing and Regulation Act
Sale of NT TAB Act

The Northern Territory regulates wagering via the Sale of NT TAB Act and the Totalisator Licensing and Regulation Act.[1] The former Act gave the Minister the authority to sell the NT TAB, while the latter establishes the scheme of regulation for the resultant privately owned entity. The Centre for International Economics reviewed both Acts, and the government has endorsed the review recommendations.

In relation to the Sale of NT TAB Act, the review supported the sale of the NT TAB, finding no public benefit in maintaining public ownership, and that some change to regulatory arrangements was necessary to separate ownership and regulatory responsibilities. The Council assesses the Northern Territory as having met its CPA obligations in relation to this Act.

The Totalisator Licensing and Regulation Act does not stipulate that a wagering licence shall be exclusive. Rather, it gives that power to the Northern Territory Licensing Commission, which may grant an exclusive licence under s21. The Commission exercised this power in 2002, granting UNiTAB Limited (the purchaser of the NT TAB), an exclusive licence for 15 years.

The review found that arguments for exclusivity based on maintaining the size of the pool were not convincing for the Northern Territory where it is unlikely that a 'Northern Territory-only' pool would be sufficient to secure the benefits typically associated with pool size in any event. Historically, the Northern Territory has merged with larger pools in other jurisdictions in offering services to Northern Territory punters. Similarly, the argument that exclusivity is necessary to prevent free riding on the racing industry was also found not to apply to the Northern Territory, where most betting takes place on events outside the Northern Territory, and where the government directly supports the local racing industry.

The review's principal argument in support of exclusivity was its doubt as to whether more than one operator would survive in a market of the Northern Territory's size and whether the market would continue to be serviced by an agency network business without exclusivity. Given these doubts, the review found it probable that exclusivity would deliver a net benefit.

The Council has reservations about both findings. The way in which to test whether the market can support only a single seller would be to remove exclusivity. The CPA obliges governments to demonstrate that competition restrictions are the only way in which to achieve their objectives. The Act does not contain explicit objectives but, if it aims to ensure the widespread availability of totalisator gambling, then there are ways other than totalisator

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

exclusivity (for example, subsidies for the provision of remote facilities) to ensure this outcome. The review, however, did not explore these alternatives.

The Council thus assesses the Northern Territory as not having complied with its CPA obligations in relation to the Totalisator Licensing and Regulation Act.

An additional issue was a 10-year moratorium on the granting of additional sports totalisator licences (announced at the time of the sale), which the review found was not in the public interest. The government lifted the moratorium following negotiations with UNiTAB Limited.

Racing and Betting Act and regulations
Unlawful Betting Act

The Northern Territory review of the Racing and Betting Act and Regulations and the Unlawful Betting Act was completed in June 2003 and made 32 recommendations, including:

- increasing the standardisation and simplification of licensing arrangements for industry participants
- removing licensing requirements for bookmakers' assistants and introducing common licensing requirements for staff employed by different types of betting operator
- removing various restrictions on bookmaking activity, including provisions on advertising, minimum betting limits, business structures, the prohibition against third party betting on lawful betting activities, financing arrangements, trading hours and the use of premises for other activity
- considering allowing expanded business activity by betting operators at approved nonracing venues.

The government accepted all major review recommendations and Parliament passed amending legislation on 30 March 2004. The Council thus assesses the Northern Territory as having complied with its CPA obligations in this area.

J3 Building professions

Architects Act

A national review of state and territory legislation regulating the architectural profession was completed in 2002. Chapter 19 provides more details on this national review.

The government endorsed the implementation of the legislative amendments recommended by the national working group that considered the Productivity Commission's 2000 review of architects' legislation. The Northern Territory's *Architects Amendment Bill 2003* was passed by Parliament in November 2003, and received royal assent on 7 January 2004. The significant amendments to the Architects Act:

- require five Architects Board members instead of three, including two nonarchitects
- simplify rules on architectural companies and partnerships
- change the restriction on the title 'architect' to permit derivatives of the title that describe a recognised competency or qualification.

The Council thus assesses the Northern Territory as having met its CPA clause 5 obligations.