15 South Australia

A1 Agricultural commodities

Barley Marketing Act 1993

The National Competition Council's 2003 National Competition Policy (NCP) assessment found that South Australia had not met its Competition Principles Agreement (CPA) clause 5 obligations arising from the Barley Marketing Act because the 2003 NCP review had not shown that the barley export monopoly was in the public interest, and the monopoly remained to be reformed. On 30 June 2004 the South Australian Government introduced the Barley Exporting Bill to Parliament. The Bill would remove the barley export monopoly by repealing the Barley Marketing Act. It would license the bulk export of barley, issuing the only main export licence to the existing monopoly exporter, ABB Grain Export Limited. Other grain exporters would be entitled to apply to a licensing authority for special export licences. The authority would consult the main export licence holder and not grant a licence if the proposed export is likely to have a significant impact on a price premium earned by the main licence holder through the exercise of market power. The licensing authority would be established or appointed by regulation following consultation with interested parties. The Bill makes no provision for ministerial directions to the authority, but the authority would be obliged to take into account any advice given by an advisory committee appointed by the Minister and referred to the licensing authority by the Minister. Decisions of the licensing authority to refuse or cancel a licence, or to impose or vary a condition on a licence, would be open to appeal to the District Court.

The Council welcomes the progress made by South Australia towards a more competitive barley export market. However, it assesses that South Australia is still to meet its related CPA clause 5 obligations. South Australia will have met these obligations when it has:

- passed and proclaimed the Barley Exporting Bill
- made Regulations that impose the minimum necessary practical restraints on the availability of special export licences.

In assessing the Regulations, the Council will be looking at the independence of the licensing authority, the fees payable by applicants and any provisions that bear on the timeliness of the licensing process, the conditions that the authority may impose on licences, and the matters that the authority must take into account in deciding whether to grant a licence.

Chicken Meat Industry Act 2003

In its 2003 NCP assessment, the Council found that South Australia had not met its CPA clause 5 obligations because it had passed new legislation, the Chicken Meat Industry Act, without showing sufficient evidence of a public interest case for the Act's restrictions on competition among growers.

As passed, the Act assisted chicken growers by requiring that individual processors allow each of their growers the opportunity to join with their other growers to bargain collectively. The Act also provided for the compulsory mediation and arbitration of various disputes arising between each processor and its growers. It repealed the *Poultry Meat Industry Act 1969*, which had not been in operation since 1996.

The Council accepted that allowing growers the opportunity to bargain collectively with individual processors was in the public interest — this opportunity had been available to growers since 1996 under various Australian Competition and Consumer Commission (ACCC) authorisations. It did not consider, however, that the public interest was served by providing for the compulsory arbitration of disputes arising:

- in the course of collectively negotiating growing agreements
- when a processor did not offer a grower a new agreement to replace one about to expire.

The Council was not convinced by the State Government's claims that these restrictions on competition would benefit the community by improving relations between growers and processors, improving the accuracy of pricing, and ensuring industry rationalisation occurred at an appropriate pace. The Council also considered that compulsory arbitration was likely to increase the costs of forming and renewing commercial relationships. Ultimately, higher adjustment costs could result if supply capacity transfers out of South Australia to less regulated jurisdictions. Moreover, if other states responded by re-introducing significant restrictions on competition in their chicken meat industries, higher chicken meat prices could arise.

The Council considered that compulsory mediation of bargaining disputes would impose much lower costs and was sufficient to meet the objective of ensuring growers have an opportunity to bargain with their processor. It also considered that compulsory mediation and arbitration of contract nonrenewal disputes could be justified only as a form of adjustment assistance for existing growers, but should not be available to those who choose to enter the industry.

Following the 2003 NCP assessment, and consultations between the Council and the government, the South Australian Minister for Agriculture introduced a Bill to Parliament to amend the Act by removing:

- compulsory arbitration of collective bargaining disputes, but introducing compulsory mediation

- compulsory mediation and arbitration of nonrenewal disputes for growers who were not party to a collectively negotiated growing agreement when the amendment commenced.

The bill was passed on 23 July 2004 and the amended Act was proclaimed on 2 September 2004.

The Council assesses that South Australia has met its CPA clause 5 obligations arising from the Chicken Meat Industry Act.

A3 Fisheries

Fisheries Act 1982

The Council's 2003 NCP assessment found that South Australia had not met its CPA clause 5 obligations arising from the Fisheries Act. The Act contained some restrictions on competition, which the 2002 NCP review had not shown to be in the public interest and had recommended for reform or further evaluation. These restrictions were:

- the prohibition on any person from holding two or more fishery licences
- the prohibition in the Marine Scale, Lakes and Coorong fisheries on persons other than vessel masters from holding fishery licences
- the prohibitions on corporate and foreign ownership of fishery licences
- licence terms of one year
- various restrictions contained within schemes of management for specific fisheries, such as those on quota holdings and transfers, and on numbers of personnel.

Since the 2003 assessment, the government has removed the general prohibitions on the holding of two or more fishery licences and on the corporate ownership of licences (via amending regulations gazetted in February 2004), and some of the other lesser restrictions contained within schemes of management. The Government has also clarified that foreign ownership of fishery licences is not presently prohibited, although the Act allows for such limits to be regulated.

The government has also completed a more general review of the Act and is preparing a consultation draft of a new Fisheries Management Bill to replace it. This Bill will address some outstanding issues raised by the NCP review, particularly licence tenure and security. The government intends to introduce this Bill in 2005.

The government has retained, albeit with some relaxation, the restrictions on ownership of licences in the Marine Scale, Lakes and Coorong fisheries. Now

a person other than the vessel master may hold one licence in one of these fisheries. However, only a vessel master can hold more than one licence in one of these fisheries and another fishery. The government argues that these restrictions are in the public interest as they are necessary to limit fishing effort, and they provide economic and social benefits to rural coastal communities.

Importantly the government has not presented the Council with sufficient evidence to show that continued restrictions on the ownership of licences in the Marine Scale, Lakes and Coorong fisheries are in the public interest. These restrictions have potentially significant costs as they restrict entry to the industry and may hamper the realisation of any economies of scale available from holding two or more licences. The Council is not yet satisfied that there are no less restrictive alternatives to meet the objectives of limiting fishing effort and of supporting the economic and social health of rural coastal communities. The Council is also concerned that, following further review by fishery management committees, some restrictions remain within schemes of management, due to industry opposition to their removal, that may not be in the public interest (e.g. rock lobster pot limits). Lastly, addressing licence tenure and security awaits passage of the proposed Fisheries Management Bill.

The Council assesses that South Australia has not met its CPA clause 5 obligations arising from the Fisheries Act.

Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987

In 2003 the Council assessed that South Australia had not met its CPA clause 5 obligations arising from the Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act because the Act was still to be repealed as recommended by the NCP review. The Act aimed to avoid overfishing by providing for the cancellation of licences until there are no more than 10, the compensation of affected licence holders, and the contribution by remaining licence holders to the cost of compensation. This program has since been completed, with payment of the last contribution due.

Although the Act has not been repealed the Council considers that it no longer restricts competition and, therefore, that South Australia has met its CPA clause obligations arising from this Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (South Australia) Act 1995

Legislation in all jurisdictions establishes the national registration scheme for agricultural and veterinary (agvet) chemicals, which covers the evaluation, registration, handling and control of these 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 South Australian legislation is the Agricultural and Veterinary Chemicals (South Australia) 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 South Australia has not met its CPA obligations in relation to this legislation.

Agricultural Chemicals Act 1955
Stock Foods Act 1941
Stock Medicines Act 1939

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).

A national review examined 'control of use' legislation for agvet chemicals in Victoria, Queensland, Western Australia and Tasmania. South Australia (along with New South Wales and the Northern Territory) conducted its own review.

South Australia's Parliament passed the *Agricultural and Veterinary Products (Control of Use) Act 2002* in August 2002. The Act repeals the Agricultural Chemicals Act, the Stock Foods Act and the Stock Medicines Act. The restrictions in the new Act were reviewed and found to be in the public interest. The Act and Regulations came into operation on 29 August 2004.

The Council assesses South Australia as having met its CPA obligations in relation to agvet chemicals 'control of use' legislation.

A6 Food

Dairy Industry Act 1992
Meat Hygiene Act 1994

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. The Council's 2003 NCP assessment reported that South Australia intended to model its dairy reforms on

Victorian legislation that had been assessed as meeting CPA obligations. At that time, South Australia indicated that amendments to the Meat Hygiene Act to implement review recommendations would be introduced in late 2003.

South Australia's Parliament passed the Primary Produce (Food Safety Schemes) Bill 2004 in the autumn 2004 session and the Bill was assented to on 1 July 2004. The Bill contains a section covering the production of dairy products in line with the NCP consistent Victorian model. Amendments to the Meat Hygiene Act to implement review recommendations were proclaimed on 29 July 2004.

The Council assesses South Australia as having met its CPA obligations in this area.

A8 Veterinary services

Veterinary Surgeons Act 1985

South Australia's Veterinary Surgeons Act contains restrictions that include licensing of veterinary surgeons and hospitals, the reservation of practices and title, advertising restrictions, and controls on business names. The review of the Act, completed in May 2000, recommended retaining the provisions of the legislation relating to reservation of practice and title to registered veterinarians. The review recommended removing the provisions that prevented veterinarians from providing treatment through another person and prohibited companies practising in partnerships unless authorised by the Veterinary Surgeons Board. The review also recommended that the restrictions on advertising in the rules of conduct be removed. The Council's 2003 NCP assessment reported that the review of the Act was approved by Cabinet in September 2000, but that the government had yet to implement the recommended reforms.

The government subsequently introduced the Veterinary Practice Bill and Parliament passed it in October 2003. The Act, which is yet to be proclaimed, repeals the Veterinary Surgeons Act and implements the recommendations of the review. While the associated Regulations are unlikely to be finalised before early 2005, they will be concerned only with fees payable by veterinarians to the Veterinary Surgeons Board and other administrative matters that are not relevant to South Australia's compliance with its CPA clause 5 obligations.

The Council assesses South Australia as having met its CPA obligations in relation to veterinarians.

A9 Mining

Mining Act 1971
Mines and Works Inspection Act 1920
Opal Mining Act 1995

The Council's 2003 NCP assessment reported that South Australia was yet to complete its reforms in this area, despite completing the review of its major mining legislation (the Mining Act, the Mines and Works Inspection Act and the Opal Mining Act) in December 2002. The review recommended repealing s13 of the Opal Mining Act, which established the Major Working Area (an area of known opal diggings within the Coober Pedy precious stones field). Under s13, corporations cannot enter the Major Working Area to prospect or mine. The review process did not identify any net public benefits from this restriction and South Australia intends to introduce an amendment by 1 December 2004 to repeal s13.

The review recommended repealing the health and safety provisions in the Mines and Works Inspection Act because occupational health and safety legislation now deals with these matters. It also recommended incorporating the remaining provisions of the Act in other appropriate legislation (such as the Mining Act). After further discussions with South Australian officials, and based on information provided in the state's 2004 NCP annual report, the Council is satisfied that the review did not identify any competition restrictions in the Mines and Works Inspection Act and the Mining Act that require reform. On that basis, a compliance finding does not depend on South Australia's completion of the recommended reforms relating to occupational health and safety.

The Council assesses that South Australia:

- has not met its CPA obligations in relation to the Opal Mining Act because the government is still to complete its reform

- has met its CPA obligations in relation to the Mines and Works Inspection Act and the Mining Act.

B1 Taxis and hire cars

Passenger Transport Act 1994

Halliday–Burgan conducted an NCP review of the Passenger Transport Act in 1999. The review concluded that there is no need to change the Act because the government has the discretion to increase the number of taxi licences by 50 per year. The Council's 2002 NCP assessment stated that the existence of the legislative discretion was not sufficient for compliance with CPA clause 5

obligations. This finding was based on the fact that the government had not used this discretion between the 1999 review and mid-2002.

The number of general taxi licences in Adelaide has remained unchanged at around 920 since 2001. The number of wheelchair-accessible taxi licences increased from 68 in 2001 to 71 in 2004. The average value of taxi plates sold in the first half of 2004 was $156 000, an increase from an average of $137 000 in the first half of 2003. This increase suggests that taxi plates may be experiencing a growing scarcity value.

The shortage of taxis in Adelaide is indicated by a passenger survey conducted by the Consumers Association of South Australia in early 2003. Almost half of the respondents gave a low rating to taxi punctuality, and a large proportion was concerned about drivers' reluctance to accept short trips.

A mitigating factor, however, has been free entry to the hire car industry since 1991, subject to the payment of nonprohibitive fees for operator and vehicle accreditation. Hire cars have thus contributed to the supply of chauffeured passenger transport services. The number of 'metropolitan' category hire cars that operate in Adelaide and would offer some competition to taxis, has been fairly static at around 80–90 vehicles over the two years to June 2004. Despite the hire car de-restriction, the value of taxi plates and the survey results on service quality indicate that significant restrictions on competition remain. The government has informed the Council that it intends to review the taxi industry by 2006, but the review will not assess CPA clause 5 matters.

The Council thus confirms its 2003 NCP assessment that South Australia has not met its CPA clause 5 obligations in relation to taxis.

B2 Tow trucks

Motor Vehicles Act 1959

South Australia completed a review of the accident towing provisions in the Motor Vehicle Act and the Accident Towing Roster Scheme Regulations in 2000, but had not commenced its post-review consultation process at the time of the 2003 NCP assessment. It informed the Council that it intended to release the report for consultation with industry and key stakeholder groups in mid-2003, and to complete a draft Bill by August 2003.

In October 2003, South Australia released for public comment the report of the 2000 NCP review, which detailed a range of competition restrictions. The report is concerned with the Adelaide metropolitan area, which is divided into zones for the purposes of the accident towing industry. The Accident Towing Roster Review Committee determines the zones and the number of roster positions in each zone. The South Australian police allocate tow trucks to accident scenes according to the next available roster position for each zone.

The review report found that the roster system allows for quick and orderly removal of damaged vehicles from roads without undesirable behaviour by tow truck operators, and that these benefits are of significant value to the community. However, the review panel was concerned that the committee controls which companies occupy roster systems. It argued that 'there is no justification in terms of the competition principles for restricting entry to operators who meet the criteria for issue of a position, nor is there a justification for the retention of the zoning system simply as a means of sharing the available business' (Transport SA 2000, p. 15). The report recommended that there be no limitations on the number of operators who can apply to participate on the roster for a specific zone.

The government released the report for public comment in October 2003, and began consultations on the review report with the tow truck industry and key stakeholder groups in January 2004. In August 2004, South Australian officials told the Council that the consultation period had finished and that amendments to regulations will be made by the end of 2004. The government has released its response to the NCP review, indicating that it will accept the recommendation to remove limits on the number of operators who can participate on the accident towing roster for a particular zone. While retaining the roster system, the amendments to regulations will remove the Accident Towing Roster Review Committee's control of which companies appear on the roster. It will then be possible for any tow truck company to be on zone rosters, provided it satisfies certain quality and probity requirements. The committee will be abolished following the changes.

Because the amended regulations have not yet been introduced, the Council assesses that South Australia has not met its CPA obligations in relation to this legislation because the state is yet to complete its reforms.

B3 Dangerous goods

Dangerous Substances Act 1979

Under the South Australian Dangerous Substances Act, licences are required to keep and convey dangerous substances. In the 2003 NCP assessment, the Council determined that South Australia had not completed its review and reform activity in this area. At that time, South Australia proposed to introduce legislation that would be consistent with the national standards covering storage, the handling of dangerous goods and the transportation of explosives.

Following discussion with South Australian officials, the Council accepts that while further legislative change may be pending, the NCP review did not recommend any changes to the current legislation. On that basis, any future amendments will fall under the CPA clause 5(5) gatekeeping provisions (see chapter 4).

The Council thus assesses that South Australia has met its CPA obligations in relation to this Act.

B6 Ports and sea freight

Harbours and Navigation Act 1993

The Harbours and Navigation Act governs the operations of harbours and related facilities — namely, harbour management, charges, vessel registration and crewing, licensing of pilot services, and other vessel safety requirements. At the time the 2003 NCP assessment, South Australia had completed a review of the Act (in 1999), but noted that it was party to an intergovernmental agreement to develop nationally consistent legislation over the period to 2005 and that it intended to amend the legislation as changes are agreed at the national level. On that basis, the Council assessed the state's reforms in this area as being incomplete for the 2003 NCP assessment.

Following discussions with South Australia, the Council is satisfied that no reforms were required as a result of the Act's review. On that basis, the Council assesses that South Australia has met its CPA clause 5 obligations. (If the government amends the legislation in line with any changes resulting from an interjurisdictional agreement to develop nationally consistent legislation, this will be a CPA clause 5(5) matter.)

C1 Health professions

Chiropractors Act 1991 (chiropractors and osteopaths)

The South Australian review of the Chiropractors Act recommended removing ownership restrictions and amending practice reservations and the advertising code. In the 2003 NCP assessment, the Council assessed that South Australia had yet to address these matters (notwithstanding that the review recommendations satisfactorily addressed the competition concerns) so had not yet met its CPA clause 5 obligations in relation to chiropractors. At that time, South Australia advised that Cabinet had approved drafting of a Bill to implement these recommendations and, after consultation with stakeholders, approval would be sought to introduce the Bill to Parliament in the second half of 2003. To date, a Bill has not been introduced, but a draft Chiropractors and Osteopath Practice Bill 2004 is available for public comment.

The review also considered competition restrictions for osteopaths because the state registers osteopaths as chiropractors under the Act. In particular, it recommended that the issue of separate legislation be considered when the number of osteopaths has increased to make separate legislation viable.

Given advice from South Australia's Department of Premier and Cabinet that there are only five osteopaths in the state and approximately 25 registered as both a chiropractor and osteopath, the Council accepts the state's position to not provide separate registration at this stage.

Nonetheless, the presence of ownership and practice restrictions in the existing legislation means that material competition restrictions remain.

As South Australia has not yet implemented reforms, the Council confirms its earlier assessment that the state has yet to meet its CPA clause 5 obligations in relation to chiropractors and osteopaths.

Dentists Act 1984
Dental Practice Act 2001

In response to the 1998 review of the Dentists Act, South Australia passed a new Dental Practice Act. This Act implements most of the recommendations of the review, but did not implement the recommendation to remove all direct and indirect ownership restrictions. In the 2003 NCP assessment, the Council considered that South Australia had not made a convincing case that ownership restrictions were necessary to achieve its regulatory objectives. The Council considered, therefore, that the state had failed to meet its review and reform obligations in relation to this profession.

The ownership restrictions are subject to a power for the Governor to grant exemptions by proclamation. The state noted in its 2004 NCP annual report that all applications for exemptions received have been granted or are in the process of being considered.

Following the receipt of the state's NCP annual report, South Australia's Department of Premier and Cabinet advised that the government will amend the Act to remove ownership restrictions. These amendments will be based on the state's template Medical Practice Bill which will effectively remove ownership restrictions.

Given the pending reforms, the Council now assesses the state's progress in reforming dental practitioner legislation as incomplete. However, it notes that until reforms are implemented, the exercise of the current exemption provisions results in the ownership restriction not imposing significant costs on the community.

Medical Practitioners Act 1983

South Australia's 1999 review of the Medical Practitioners Act recommended removing ownership restrictions, among other things. The former government introduced amending legislation in May 2001 to implement the review's recommendations, but the Bill lapsed following the state elections. The current government aimed to introduce a new Bill in late 2003.

A new Medical Practice Bill 2004, if passed, will implement key review recommendations relating to the medical profession, including the removal of ownership restrictions.

However, because the legislation has not been passed by Parliament to date, the state has not yet met its CPA obligations in relation to this profession.

Optometrists Act 1920

South Australia's review of optometry regulation recommended removing restrictions on training providers and introducing a code of conduct. The Council's 2003 assessment considered that the review recommendations appeared consistent with the state's CPA obligations. However, because the state had not yet implemented optometry reforms, the Council assessed the state's progress in this area as being incomplete.

In the context of this assessment, the state has advised that the Optometry Practice Bill 2004 is currently before the Board for comment, prior to it being released for public consultation.

As the reforms have not been implemented, the Council confirms its earlier assessment that the state has not yet met its CPA clause 5 obligations in relation to this profession.

Pharmacy Act 1991

CoAG national processes for reviewing pharmacy regulation recommended removing restrictions on the number of pharmacies that a pharmacist can own and on friendly societies' ability to operate in the same way as other pharmacies (see chapter 19). Compliance with these requirements requires the state to remove these restrictions contained in the Pharmacy Act.

On 3 August 2004, South Australia received a letter from the Prime Minister which noted that the state will not attract competition payment deductions if it implemented similar reforms to that advised to New South Wales. The Prime Minister also stated that competition payments will not be contingent on whether the South Australian proposal to allow National Pharmacies to increase its ownership from 31 to 40 pharmacies was pursued.

On 15 September 2004, the Council received advice from South Australia that its Parliamentary Counsel was currently drafting amendments to the Pharmacy Act consistent with the advice from the Prime Minister to:

- increase the number of pharmacies a pharmacist can own from four to five
- allow new friendly societies to enter the South Australian market with a maximum number of six for each society

- increase the number of pharmacies that National Pharmacies may own from 31 to 40.

These reforms, if implemented, will improve competition in the pharmacy industry by removing restrictions on new friendly society entrants and by increasing the number of pharmacies both pharmacists and friendly societies can own.

However, these proposed reforms fall short of those required by CoAG national review processes as CoAG outcomes require that restrictions on the number of pharmacies a pharmacist can own be removed.

South Australia has not implemented pharmacy regulation reforms consistent with CoAG requirements to date, so it has not yet met its CPA obligations in relation to this profession.

Physiotherapists Act 1991

South Australia completed a review of the Physiotherapists Act in February 1999. The review recommendations included replacing broad practice restrictions with core practice restrictions and removing restrictions on the ownership of physiotherapy practices. At the time of the 2003 NCP assessment, the government indicated that it expected to release a draft Bill for consultation in late 2003.

In the context of this assessment, the state has advised that Cabinet approved drafting of a Bill to implement these recommendations. Following consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

Given the lack of progress since the 2003 NCP Assessment, the Council reaffirms its assessment that South Australia is yet to meet its CPA clause 5 obligations in relation to this legislation.

Chiropodists Act 1950

The recommendations from the 1999 review of South Australia's Chiropodists Act include limiting practice reservation and removing ownership restrictions. Following South Australia's 2004 NCP Annual Report which advised that a Bill implementing review recommendations was expected to be introduced to Parliament later in 2004, the Podiatry Practice Bill 2004 was subsequently introduced on 30 June 2004. The Council expects this will also result in changes to codes of professional conduct developed by the Board in line with review recommendations.

However, as Parliament has not yet passed the legislation, the Council confirms its 2003 assessment that South Australia has yet to meet its CPA clause 5 obligations in relation to this legislation.

Psychological Practices Act 1973

The South Australian review of the Psychological Practices Act was completed in 1999. It recommended removing advertising and practice restrictions. The state has advised that Cabinet approved drafting of a Bill to implement these recommendations. Following consultation with stakeholders, approval will be sought to introduce the Bill to Parliament later in 2004.

However, given the lack of progress since the 2003 NCP assessment, the Council confirms its assessment that South Australia has yet to meet its CPA clause 5 obligations in relation to this legislation.

Occupational Therapists Act 1974

The Occupational Therapists Act's key restriction is title protection for occupational therapists. Title protection can restrict competition between occupational therapists and other practitioners who provide similar services, by making it difficult for these other practitioners to describe their services in ways that are meaningful to potential consumers. In addition, the qualifications, character tests and fees required of applicants for registration restrict entry to the profession of occupational therapy and potentially weaken competition among occupational therapists.

South Australia's review of occupational therapy legislation recommended continuing to preserve title restrictions as a means of overcoming information asymmetry, particularly given that some consumers are vulnerable or socially disadvantaged. It also noted that title protection and the related registration system provide consumers and other professionals with a mechanism for lodging complaints against unprofessional and incompetent occupational therapists. In its 2004 NCP annual report, South Australia has advised it will retain title restriction, pending amendments to occupational therapy legislation.

Without a robust public interest case, however, the Council does not accept the above arguments because there does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. 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. The Council notes too that the South Australian Parliament has passed the Health and Community Services Complaints Bill 2004, which will provide the state with an independent body to which complaints can be made about occupational therapists. While the Council accepts that the Complaints Commissioner under the Act cannot discipline a practitioner, it notes that the Commissioner can conciliate disputes and thereby contribute to addressing consumer concerns.

In addition, many occupational therapists are employed in the public sector. Further, consumers are unlikely to seek occupational therapy services

without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer.

While the Council considers that title protection restricts competition, it notes that the costs of retaining the restriction are not significant because nonregistrants can still use unrestricted titles. In the 2003 NCP assessment, the Council assessed that South Australia's proposed legislative changes, which include retaining title protection, would not comply with its CPA obligations. Given that South Australia has formally advised that it will retain title restriction, the Council reconfirms that the state will not meet its CPA obligations when it amends its occupational therapists legislation.

C2 Drugs, poisons and controlled substances

Controlled Substances Act 1984

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.

South Australia has not yet implemented the Galbally Review recommendations, and has advised that it will consider the report in the context of interjurisdictional processes.

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

D Legal services

Legal Practitioners Act 1981

The South Australian Government passed the *Legal Practitioners (Miscellaneous) Amendment Act 2003*, which implemented some NCP reforms, including:

- removing Australian residency requirements for applicants seeking admission as a barrister or solicitor
- opening up some reserved areas of work, with a provision to allow land agents to draft leases above rental values of $25 000 for residential and $100 000 for nonresidential leases.

South Australia has implemented most of the recommendations from its NCP review of the legal profession, except for permitting multidisciplinary practices. This latter issue will be examined, including for ethical impacts, as part of implementing national model laws outcomes (see chapter 19). Existing restrictions on professional indemnity insurance will also be considered in this context.

The state has not, therefore, yet met its CPA obligations in relation to the legal profession.

E Other professions

Other licensed occupations

Travel Agents Act 1986

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 findings of the review and the working party response are outlined in chapter 19.

South Australia has approved the recommended increase in the exemption threshold level and is drafting Regulations to implement this change. It has decided not to remove the Crown exemption for the South Australian Tourism Commission because the commission does not engage in competitive commercial activity.

South Australia has not met its CPA obligations in relation to travel agents legislation because it has not completed its reforms.

Conveyancers Act 1994

South Australia's Conveyancers Act imposes controls on entry to the profession. A 1999 review of the Act found that the restrictions on the ownership of incorporated conveyancing businesses could not be justified. It noted that the restrictions inhibit the development of multidisciplinary practices, which may offer economies of scale and flexibility of service provision. It recommended replacing the ownership restrictions with provisions that require the proper management and supervision of a registered incorporated conveyancer by a registered conveyancer, and to make it an offence for directors to unduly influence conveyancers in the performance of their duties. The review also recommended removing the requirement that the sole object of an incorporated conveyancer be carrying on a business as a conveyancer.

A Bill to remove the ownership restrictions and prohibit undue influence was introduced to Parliament in late 2000, but lapsed with the calling of the election. At the time of the 2003 NCP assessment, the government was consulting with stakeholders and intended to introduce new legislation in late 2003.

Since the 2003 NCP assessment, legislation changing ownership restrictions passed through both houses of Parliament in May 2004. The Council thus assesses that South Australia has met its CPA obligations in this area.

Employment Agents Registration Act 1993

South Australia completed the review of the Employment Agents Registration Act in October 2000. The review recommended that:

- current licensing arrangements be removed from the Act
- employment agents be precluded from charging a fee to a jobseeker simply because the employment agent has the jobseeker on its books, or is seeking employment on behalf of that person
- employment agents be prohibited from charging a recurring fee to a jobseeker or a fee for engagement of the jobseeker
- the Act requires the development of, and adherence to, an industry code of conduct, and that appropriate penalties be determined for breaches of the Act.

The government is consulting with the industry to identify the optimal method of addressing these concerns and achieving an approach that is consistent with that of other jurisdictions. This approach may include a code of practice and a reduced level of legislation. South Australia anticipates that this matter will be resolved by the end of 2004.

Because reform is incomplete, the Council assesses South Australia as not having met its CPA obligations in this area. The Council notes that the impact of the restrictions is unlikely to be significant because the registration fee is only $10.

Hairdressers Act 1988

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

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to legislation regulating hairdressers, because the then government had endorsed the review recommendations and passed the recommended legislative amendments. To ensure it remains compliant, the current government needs to schedule a further review. South Australia has indicated that it will commence another review in 2005.

The Council thus confirms its 2001 NCP assessment but notes that this is contingent on the further foreshadowed review being undertaken.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Motor Vehicles Act 1959

In South Australia, a statutory monopoly provides compulsory third party insurance. South Australia conducted a second review of this insurance type in 1999, reversing the 1998 review's recommendation that multiple provision be introduced. The government confirmed in September 2001 that the Motor Accident Commission would remain the sole provider of compulsory third party insurance in South Australia and South Australia's 2003 and 2004 NCP annual reports reiterated the state's public interest case for retaining the single statutory provider — that is, that its statutory monopoly scheme allows cheaper premiums and that only such arrangements can achieve the objectives of universal coverage, affordability and fair claims settlements. Some minor legislative amendments came into force in October 2002.

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

Workers Rehabilitation and Compensation Act 1986

In South Australia, a statutory monopoly provides workers compensation insurance. An inter-agency steering committee completed an NCP review in mid-2002 that identified restrictions to competition but recommended only minor changes to the Workers Rehabilitation and Compensation Act. The review argued that statutory monopoly provision has net public benefits. The government is considering the review in the context of two separate investigation reports provided to the government in late 2002 and early 2003 — one relating to governance arrangements in the WorkCover Corporation and one relating to workers' compensation and occupational health and safety systems.

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

F2 Superannuation

Southern State Superannuation Act 1987

This Act establishes the public sector superannuation arrangements in South Australia. Under the Act, public sector employees cannot choose their superannuation provider for employer contributions. The main outcomes of the restricted choice of fund provider are that contributors cannot take advantage of higher returns that other superannuation funds may provide, and the market presence of alternative service providers is constrained. South Australia's Crown Solicitor advised the government in 1999, after a 'desktop review', that the anticompetitive effect of the restriction on fund provider is negligible because Funds SA (previously Super SA) allows competition for funds management.

South Australia has since commented that Funds SA offers advantages in insurance cover, low administration fees, a choice of investment strategy and has the lowest administration costs of all Australian superannuation schemes. South Australia considers that the outsourcing of funds generates benefits from the competition between funds managers to obtain good returns, and referred to the recent above-average returns of the fund. South Australia contends, therefore, that the restricted choice of fund provider therefore has no material impact.

The absence of a full NCP review that considers the CPA clause 5 obligations comprehensively has presented the Council with difficulties in assessing South Australia's compliance with its CPA obligations. The Council notes, however, that reviews of similar arrangements in other jurisdictions have concluded that the benefits of the arrangements for public servants exceed the costs.

Based on the evidence provided by South Australia on the impacts of its superannuation legislation arrangements, and the experience of reviews in other jurisdictions, the Council concludes that South Australia has complied with its CPA obligations for this legislation.

G1 Shop trading hours

Shop Trading Hours Act 1977

Prior to 2003, South Australia's Shop Trading Hours Act imposed complex restrictions on trading hours that discriminated between retailers according to their size, location and products sold. Most notably, the Act limited evening and Sunday trading by larger general retailers and allowed longer trading hours for retailers located in the central business district and Glenelg tourist precincts.

In June 2003 the government passed legislation to substantially reform trading hours. Commencing in July 2003, Sunday trading was extended to suburban areas between 11 am and 5 pm, and week night shopping was allowed until 9 pm in all areas.

In the 2003 NCP assessment, the Council noted that South Australia had implemented significant reforms, but that some discrimination against larger retailers remained. Unlike their smaller, specialist competitors, larger general retailers retailers cannot open after 9 pm on weekdays, 6 pm on Saturdays and 5 pm on Sundays. The government has not acted on these remaining restrictions or provided a public interest case to support them.

The government's reforms mean the cost of the remaining restrictions is relatively small compared to the situation before July 2003. Nevertheless, the government has not provided a public interest case for the remaining restrictions. Accordingly, the Council retains its 2003 assessment that South Australia has not complied with its CPA clause 5 obligations in this area.

G2 Liquor licensing

Liquor Licensing Act 1997 (retaining certain restrictions from the earlier *Liquor Licensing Act 1985*)

South Australia completed its NCP review of the 1985 Act in 1996 and removed a number of restrictions in 1997. It retained, however, the proof-of-need test and the requirement that packaged liquor be sold only from premises exclusively devoted to the sale of liquor. The review recommended retaining these provisions and conducting a further review after three or four years, when evidence of outcomes in less regulated jurisdictions would be available. In the 2003 NCP assessment, the Council assessed the exclusive premises requirement as complying with CPA obligations.

However, South Australia is yet to complete the review and reform of its needs test. A team drawn from the Attorney-General's department is conducting a review against terms of reference that reflect the CPA clause 5. It published an issues paper in November 2002, invited submissions and published a draft report in April 2003. The draft report described the needs test arrangements as a serious competition restriction that public benefits cannot justify and that should be abolished. The government is considering the report's recommendation.

Because South Australia has not completed its review and reform activity, the Council assesses it as having not complied with its CPA clause 5 obligations in relation to liquor licensing.

G3 Petrol retailing

Petrol Products Regulation Act 1995

South Australia's Petrol Products Regulation Act allows the relevant Minister to withhold new retail petroleum licences if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. South Australia completed a review of the Act in 2001, finding that the Act created a barrier to entry and protected industry participants without providing a net public benefit.

The government accepted the findings of the review and reported in 2003 that it was drafting legislation giving effect to the recommendations. It intended to phase out the current restrictions to provide industry participants with time to adjust their business plans for the entry restriction's removal, which will occur at a time of already rapid change in the industry. The legislation is not expected to take effect until 31 December 2004.

The Council accepts the need for a phased reform, but notes that South Australia is yet to pass legislation to effect the foreshadowed reforms. It thus retains its 2003 assessment that South Australia has not yet complied with its CPA obligations in relation to petrol retailing.

H3 Trade measurement legislation

Trade Measurement Act 1993
Trade Measurement Administration Act 1993

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 states and territories involved (including South Australia) have yet to meet their CPA obligations in relation to trade measurement legislation.

In addition to the national review of trade measurement legislation, governments also listed their trade measurement (administration) legislation for review. South Australia is awaiting the national response before implementing reforms.

The Council thus assesses South Australia as not having met its CPA clause 5 obligations because it has not completed its reforms for either Act.

I1 Child care

Children's Protection Act 1993

In its 2003 NCP assessment, the Council noted that the review of the Children's Protection Act found that restrictions in the Act are unjustified and may limit the ability of a court to appoint an officer best suited to the needs of the child. Cabinet approved drafting amendments in August 2000.

South Australia's 2004 NCP annual report to the Council provided a robust case that the Act does not unnecessarily restrict competition. The Council agrees that the review provided no evidence that the relevant section of the Act restricts competition; rather, the restriction may not be in the best interests of the child. This is a social policy issue, rather than a competition matter.

The Council accepts that the Act does not contain restrictions on competition. It thus assesses that South Australia as having met its CPA clause 5 obligations in this area.

I2 Gambling

Authorised Betting Operations Act 2000

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

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

The phase-out period for the removal of minimum telephone bets was completed on 1 July 2004. In May 2004 a Bill was passed to amend the Act to allow the provision of fixed odds betting for the TAB, allow bookmakers to be a body corporate and clarify criteria for issuing permits to bookmakers.

The Council thus assesses South Australia as having complied with its CPA obligations in relation to racing and betting legislation.

State Lotteries Act 1966

South Australia reviewed lottery legislation as part of its omnibus review of gambling legislation. The review found that the state-operated Lotteries Commission does not have exclusivity in a technical sense, but enjoys market dominance that is not dissimilar to exclusivity. The review recommended maintaining the current arrangements, and the government accepted the review recommendation, stating that the availability and terms of lottery products through the Lotteries Commission are adequate and that the community obtains a financial benefit from the current arrangements.

In its 2003 NCP assessment, the Council assessed South Australia as not having met its CPA obligations in relation to lotteries legislation because it considered that the government's public benefit arguments do not support indefinitely retaining effective exclusivity for the Lotteries Commission. (The review's position and the Council's views can be found in chapter 9 of the 2003 assessment.)

In the absence of further developments, the Council maintains its 2003 assessment that South Australia has not met its CPA obligations in this area.

Gaming Machines Act 1992

South Australia considered its Gaming Machines Act as part of the omnibus review of its gambling legislation, which reported in 2003. Gaming machines at the Adelaide Casino are regulated under the *Casino Act 1977* and the Casino Approved Licensing Agreement.

The review found that:

- the restriction on gaming machine licences being issued to hotels and clubs only is justified as a harm minimisation measure
- the role of the State Supply Board as single gaming machine supplier and service licensee should be removed and a more competitive market structure should be developed
- a scheme enabling the transfer between venues of the right to operate gaming machines (without breaching the venue cap) should be introduced.

In its 2003 NCP assessment, the Council accepted the government's view that the board's role as the single *supplier* of machines has public benefits. (However, the government concurred with the review finding that a more competitive arrangement should replace the State Supply Board's monopoly on *service* provision and introduced amendments into Parliament in May 2004.)

The Council also noted that the government had not responded to the issue of transferability of gaming machines within the existing cap arrangements. Legislation to give effect to a transfer system has been drafted and will need to be considered by Parliament before the current freeze on gaming machine numbers expires on 15 December 2004. After lapsing when Parliament was prorogued following the last sitting, the government has re-introduced the Gaming Machines (Miscellaneous) Amendment Bill 2004 into Parliament. The Bill contains provisions to introduce transferability of gaming machines and to abolish the exclusive gaming machine service licence. The Bill is scheduled for passing by 14 December 2004.

Because South Australia is yet to complete its reforms, the Council assesses it as not having complied with its CPA obligations in relation to gaming machines.

Lottery and Gaming Act 1936

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

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

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

The government concurred with the review findings, but noted that the age limit for participation in bingo and instant lottery tickets should be the same as that for the sale of SA Lotteries products (16 years). The lotteries age limit is before the Parliament for consideration. While it may be possible to construct an incidental competition impact deriving from different age limits applying for the purchase of minor gambling, the Council considers that this impact is primarily a social policy matter.

Despite some incomplete reform activity in response to the omnibus review, the Council assesses that South Australia has met its CPA obligations in relation to minor gambling.

J3 Building occupations

Architects Act 1939

A national review of state and territory legislation regulating the architectural profession was completed in 2002 (see chapter 19).

The South Australian Government had not introduced a Bill to amend the Architects Act at the time of the 2003 NCP assessment, and the Council found that review and reform activity was incomplete. South Australia now expects to introduce such an amending Bill to Parliament in November 2004. The amendments will remove the anticompetitive elements, including provisions restricting the ownership of architectural companies and limiting advertising.

The Council assesses South Australia as not having met its CPA clause 5 obligations because the state has not yet completed the reform process.

Survey Act 1992

The Survey Act contained competition restrictions that related to the licensing, registration, entry requirements, reservation of title (and derivatives), reservation of practice, disciplinary processes, business conduct (including ownership restrictions) and business licensing of surveyors. A review was completed in 1999, and the review report was released in 2002. It recommended removing restrictions on companies and partnerships, and adding new provisions to make it an offence for any person to exert undue influence over a licensed surveyor to provide a service in an inappropriate or unprofessional manner. When the Council finalised the 2003 NCP assessment, the government had not introduced a Bill to Parliament containing these reforms, so the Council concluded that review and reform activity was incomplete. The government subsequently introduced such a Bill, which Parliament passed in late 2003. The legislation came into operation on 1 April 2004.

The Council thus assesses that South Australia has met its CPA clause 5 obligations in this area.

Land Valuers Act 1994

South Australia's Land Valuers Act involves negative licensing and disciplinary provisions aimed at ensuring consumer protection. These arrangements work by excluding valuers deemed to have acted illegally or improperly. South Australia's NCP review of the Act found the regulation of land valuers in this way to be justified, with consumers being at risk of significant financial loss if valuers are incompetent, negligent or dishonest. It

recommended that the Act retain the requirement for land valuers to hold prescribed qualifications. The government endorsed this recommendation.

In the 2003 NCP assessment, the Council reported that the review panel concluded that postgraduate requirements are too onerous and that the government should broaden the number and type of acceptable qualifications. The government advised at the time that it was awaiting approval of a national training package, after which South Australia would review the prescribed qualifications for valuers so as to prescribe core competencies rather than qualifications. The national review of valuer competencies was scheduled to be completed in 2005. The Council thus assessed review and reform activity as being incomplete.

Subsequently, South Australian officials have advised the Council that its NCP review of the Land Valuers Act recommended a *consideration* of whether to remove the completion of subjects other than the professional sequence from the training requirements in all postgraduate courses; the review panel did not *require* changes to postgraduate requirements. South Australia has clarified that any changes that it may make to required valuer qualifications after the national review is completed would be separate from the NCP review.

The Council assesses that South Australia has met its CPA clause 5 obligations, because the NCP review justified retaining the restrictions relating to prescribed qualifications.

Building Work Contractors Act 1995

This Act prescribes licensing, registration, entry requirements, the reservation of practice, disciplinary processes and business conduct restrictions that apply to builders and some tradespeople. South Australia completed a review of the Act in 2001, which recommended that the government retain the licensing and registration provisions.

South Australia has advised that the final report released by the government omitted the part of the review dealing with the financial resources requirements for contractors and with mandatory building indemnity insurance. These areas were referred back to the review panel for reconsideration in light of the collapse of HIH, one of only two providers of building indemnity insurance in South Australia. A supplementary issues paper, dealing with financial and insurance requirements, was released for public and industry comment. However, this process was overtaken by the commissioning and completion of a national review dealing with the same issues. A national working party is now developing recommendations for a package of nationally consistent reforms to building legislation, aimed at reducing building disputes and indemnity insurance claims. The financial resources and reputation requirements in the Act are thus likely to be increased rather than decreased as a result of this process.

In the 2003 NCP assessment, the Council assessed South Australia's review and reform of the Building Work Contractors Act as being incomplete because South Australia was awaiting the national working party's recommendations. Following discussions with South Australian officials, the Council accepts that the scope of the NCP review was affected by the subsequent establishment of the national working party, and that any consequent increases in financial and reputation requirements will be assessed under the CPA clause 5(5) gatekeeping provisions. By retaining the licensing and registration provisions in the Act, South Australia has acted in accord with the NCP review.

The Council thus assesses South Australia as having met its CPA clause 5 obligations. (Gatekeeping processes will apply to changes in financial requirements placed on licensees as a result of the national review.)