

# 14 Western Australia

## A1 Agricultural commodities

### *Marketing of Eggs Act 1945*

In 2003 the National Competition Council assessed that Western Australia had not met its Competition Principles Agreement (CPA) clause 5 obligations arising from the Marketing of Eggs Act because the government, while it had announced its intention to remove restrictions on competition in the supply and marketing of eggs by July 2007, had not demonstrated the public interest in delaying reform to this date.

On 3 June 2004 the government introduced the Marketing of Eggs Amendment Bill 2004 into Parliament. The Bill provided for the expiry of the Act and the dissolution of the Western Australian Egg Marketing Board on or before 31 December 2005, and the transfer of the board's assets to a producer-owned egg marketing company based on co-operative principles. The Bill was passed by Parliament on 19 August 2004. The government has also announced that it has allocated \$8.75 million to assist egg producers to adjust to the removal of egg supply licensing and quotas.

The Council assesses that Western Australia has now fulfilled its CPA clause 5 obligations arising from the Marketing of Eggs Act because it is satisfied that the legislative reforms represent a firm transitional arrangement, and that this arrangement is justified by the need to complete structural reform and to allow producers time to plan for the new competitive market.

### *Grain Marketing Act 1975*

In its 2003 NCP assessment, the Council concluded that Western Australia had yet to fulfil its CPA clause 5 obligations because the review and reform of the monopoly on the export of barley, canola and lupins were incomplete. Replacing the 1975 Act, new legislation, the *Grain Marketing Act 2002*:

- granted Grain Pool Pty Ltd (GPPL) the main export licence to export barley, canola and lupins in bulk
- established a system of special export licences, administered by a Grain Licensing Authority, for the bulk export of barley, canola and lupins by parties other than GPPL where this will not significantly impact on price premiums that GPPL captures through the exercise of market power

- removed all restrictions on the export of these grains in bags and containers, and on the export of processed grains.

The government had also appointed the members of the authority. However, it was still to issue the regulations and guidelines provided for by the new Act. The Council considered these regulations and guidelines important for maximising confidence amongst growers, traders and customers in the predictability of the licensing regime through ensuring that, as agreed between the government and the Council in August 2002, the authority would:

- be predisposed to grant export licences to parties other than GPPL unless satisfied that this would have a significant impact on a price premium arising from the market power of the single desk
- obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power of the single desk.

The government released new regulations and guidelines in September 2003, soon after completion of the 2003 NCP assessment. The regulations set down the fees payable by holders of export licences. The guidelines address issues such as the definition of a market power related premium, the matters that it might consider when assessing the effect of a proposed export on the state's reputation as a grain exporter and on the state's grain industry generally, and the matters that the authority is to report on to the Minister. The latter includes an assessment of the existence and extent of price premiums resulting from the market power of the single desk.

On the central issue of predisposition to grant licences the Council found the guidelines left considerable uncertainty about how the authority would decide:

- which grain export markets returned market power-related premiums to GPPL and whether a proposed export would affect any such premiums to a significant extent, as the authority is required to decide by s31(2) and (3) of the Act
- if a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally, as the authority is required to decide by s31(4) of the Act.

The Council communicated its view to the Minister for Agriculture in October 2003, noting that, as a consequence, it would need to scrutinise the performance of the authority in its first season of operation.

The authority began its task of considering applications for special export licences in September 2003. In its first season of operation, it licensed the export to the Middle East of 433 000 tonnes of feed barley, of which 339 736 tonnes were shipped, representing approximately 17 per cent of Western

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Australia's average barley production. It also licensed the export of smaller tonnages of malting barley<sup>1</sup>, canola and lupins, although no grain was shipped under these licences. The authority declined applications to export 318 000 tonnes of feed barley to the Middle East and 85 000 tonnes of canola to Asia and the Indian subcontinent. Two licence applications were appealed to the Minister for Agriculture who granted one of these.

The authority commissioned agribusiness analysts Farm Horizons to independently assess the existence and extent of premiums arising from the exercise of market power. Farm Horizons examined 15 markets identified by GPPL as 'core' to its business but found only one — the Japanese barley market — was likely to allow GPPL to exercise market power, and the price premiums observed in this market could reflect additional servicing costs. It also found that Western Australian cash grain prices were consistently lower than Victorian prices, even though Western Australia has a port charge and shipping cost advantage.

In June 2004 the authority reported to the Minister on its operations for the 2003-04 season (GLA 2004). The authority noted, according to submissions it had received, that just over 700 growers had sold grain to exporters other than GPPL, representing more than 10 per cent of growers. It also noted the difficulty of showing price premiums from the exercise of market power but, nevertheless, expressed disappointment at the lack of evidence provided by GPPL to substantiate its claims that it captures such premiums in a large number of markets. The authority foreshadowed for the 2004-05 season that it would initially take a cautious approach to licensing until it had a firmer idea of the likely crop size, but thereafter would take a more liberal view, now that it has a better understanding of grain markets. It recommended that the Minister retain the Act and Ministerial guidelines without amendment, but amend the regulations to reduce application fees. It also recommended that the Minister not consider new information when deciding appeals against its decisions. The Minister has indicated he intends to review the licensing arrangements in 2004.

The authority is now issuing licences for the 2004-05 season following an initial delay while it firmed its view on the likely size of this crop. As at October 2004, the authority has licensed the export of 385 000 tonnes of feed barley, which represents around 25 per cent of the expected Western Australian crop. In addition it has rolled over a 2003-04 malting barley export licence into 2004-05, bringing total barley export licences to 420 000 tonnes for the 2004-05 season so far. This compares with 433 000 tonnes licensed for the 2003-04 season which represented around 15 per cent of that season's crop. This season it has also licensed the export of 38 000 tonnes of canola and 60 000 tonnes of lupins (via appeal to the Minister). The authority has declined applications to export 150 000 tonnes of feed barley to the Middle East, 65 000 tonnes of malting barley to Asia and 50 000 tonnes of canola to the subcontinent.

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<sup>1</sup> Licence granted on appeal to the Minister.

The issue of special export licences by the authority has brought a very significant degree of additional competition to the grain accumulation market in Western Australia. The National Farmers Federation (NFF) estimates this competition added \$3.5–6.0 million to the state’s rural economy, in particular through cash prices for feed barley increasing by \$10 to \$15 per tonne following the issue of licences (NFF 2004). The NFF has observed other benefits from the entry of grain traders and a more competitive cash market such as allowing growers to reduce their pricing risk and borrowing exposure. It foresees that a more liquid cash market will bring new forward contracting options for farmers. At the same time the pools operated by GPPL have remained available and continue to be strongly supported by farmers.

Yet it is also clear that special export licences have been denied or delayed where, according to the Farm Horizons assessment, it is unlikely that market power-related price premiums exist to be threatened. The authority has interpreted s31(4) of the Act — which requires it to consider the effect of granting a licence on the state’s reputation as a grain exporter and the effect on the grain industry generally — to include concern for the ability of GPPL to source sufficient grain to meet the requirements of its core customers. For instance, in its report to the Minister it noted:

*Because of the large crop following a series of smaller crops, and hence lower export availabilities of the previous four years from 1998/99 to 2001/02, the GLA took the view that there was scope for significant volume to be sold through special export licences without impacting on the marketing strategies of the GPPL. However the GLA is mindful that crop size will have a large bearing on the quantity which can be exported outside the pooling system without having an adverse impact on the GPPL being able to service core markets. (GLA 2004, p. 6)*

This strongly implies that, had the 2003-04 crop been lower than average, the authority would have licensed a much smaller volume of exports by parties other than GPPL.

In essence the authority is claiming that, in low crop seasons, the state’s reputation as a grain exporter, or the grain industry generally (a relevant consideration under s31(4) of the Act), may be harmed if competition left GPPL with insufficient grain to supply its regular customers.

The Council is not convinced by this claim. Certainly, consistency of supply is important to some grain customers, some of whom may respond to reduced supply from GPPL by switching some or their entire requirement to other suppliers. However, the authority has not explained why GPPL cannot compete to obtain sufficient grain from WA growers. Indeed former statutory monopoly marketing boards generally continue to enjoy strong grower support following the lowering of barriers to competitive entry. Moreover, GPPL can acquire grain from growers outside of Western Australia, for instance via its marketing joint ventures with ABB Grain Ltd and with Elders.

The net benefits of the export licensing arrangements are likely to be improved by exposing GPPL to more competition in the grain accumulation market. This will improve the ability of grain exporters to offer growers financing and risk management options that better meet their diverse preferences, and to win export orders against foreign suppliers in markets where GPPL is unlikely to earn a premium from the exercise of market power.

Nevertheless the advent of Western Australia's grain export licensing arrangements represents a very important milestone in the development of Australia's grain industry. Western Australia accounts for over one quarter of Australian barley production and around one third of barley exports. Export marketing restrictions have been removed or reduced earlier in Victoria, Queensland and New South Wales — however exports take a much lower share of these states' crops. Moreover, having decided in favour of change, the Western Australian Government has actually implemented it in a relatively short space of time, refusing to back down in the face of opposition from vested interests. Not all governments have demonstrated such a clear commitment to the reform in the public interest of agricultural marketing monopolies.

The Council also recognises that, in the early days of such an important change for the Western Australian grain industry, the authority needed to be cautious. Now that the authority has the benefit of experience from its first complete season of operation, and the analysis prepared by Farm Horizons, it is in a position to license grain exports more readily. The Council welcomes recent signs that the authority is moving in this direction.

Another change that is likely to make an important difference to competition is to make the licensing process more predictable through amending the Ministerial guidelines to specify more clearly the kind of circumstances relevant to s31(4) of the Act. For example:

- where a licence applicant has been found to have misrepresented the quality of grain exported
- where a licence applicant has previously failed to honour payment obligations to growers
- where a licence applicant has previously sold grain in one market knowing that it would be transhipped to another market for which it did not have an export licence.

The Minister has commissioned a review of the Grain Marketing Act and the authority by national accounting and business advisory firm RSM Bird Cameron. This review is due to report by the end of December 2004, and has been asked to comment on the costs and benefits of the Act and on how it could be improved to enhance the benefit to the Western Australian grains industry.

In these circumstances the Council has decided to finalise its assessment in 2005. Western Australia will have met its obligations arising from the grain exporting licensing arrangements when it has amended the Ministerial guidelines to improve the predictability of the export licensing arrangements. In particular the Council believes these should:

- set out clear and specific criteria that the authority should use to decide:
  - which grain export markets return market power-related premiums to GPPL and whether a proposed export would affect any such premiums to a significant extent (under s31(2) and (3) of the Act)
  - if a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally (under s31(4) of the Act)
- state that the government expects the authority will not withhold special export licences unless these criteria are met.

#### *Marketing of Potatoes Act 1946*

In 2003 the Council assessed that Western Australia had not met its CPA clause 5 obligations relating to the Marketing of Potatoes Act, which regulates the supply of potatoes grown in the state for fresh consumption and fixes their wholesale price. The 2003 review by the Department of Agriculture, in finding that evidence for the net public benefit was inconclusive, reversed the presumption required by the CPA clause 5 (that is the presumption that legislation should not restrict competition unless this is in the public interest). It also failed to adequately demonstrate that the supply management and price-fixing powers of the Potato Marketing Corporation are in the public interest.

In August 2003 the government decided to retain the regulation of supply management and price fixing regulation. Shortly afterwards, the Minister established an advisory group to consider the regulatory arrangements and recommend changes to improve their efficiency. In July 2004 the Minister announced that the government would introduce amendments to the Act to Parliament next year, to:

- change the basis of supply restrictions from licensed growing area to quantity
- introduce incentives for growers to supply varieties preferred by consumers
- devolve from the Minister to the corporation the regulatory functions of setting aggregate supply and fixing wholesale prices
- transfer the commercial functions of marketing, promotion and exporting to a grower-owned entity.

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The Minister said the changes would ‘improve the effectiveness of the Potato Marketing Act without fundamentally altering the regulation of domestic potato supply’ and that ‘continued statutory marketing for potatoes would maintain industry stability in regional areas’ (Chance 2004).

As the Minister has acknowledged, the proposed changes will not remove the restrictions on competition imposed by the Act, but should reduce the costs to the community of these restrictions, particularly by improving the availability of lower yielding potato varieties preferred by consumers, and by reducing the incentives on growers to maximise area yield through the application of higher fertiliser and other inputs. Nevertheless, the government has not presented convincing new evidence that the restrictions bring benefits to the community that outweigh the costs, or that the objectives of the legislation can be achieved only by restricting competition.

Since the 2003 NCP assessment, the government has argued that a retail price survey commissioned by the Potato Marketing Corporation shows that Western Australian consumers enjoy cheaper potatoes than consumers in other states and, therefore, that the legislative restrictions are in the public interest. The difficulty with such surveys is that they shed little light on what prices consumers would face, or how quality and product choice would change to meet consumer preferences, without the restrictions at issue. For instance, the retail price survey reveals nothing about whether, without the restrictions, Perth prices for most desired table potato varieties would track equivalent prices in Sydney or Melbourne, or the often significantly lower Adelaide prices, or somewhere in between.

As acknowledged by the NCP review, the restrictions may increase prices paid by Western Australian consumers. According to the review:

*... the PMC sets its operational objective and performance indicator to meet 95 per cent of domestic demand, as described in its last two annual reports. The remaining market demand is met by imports not regulated in the Act. The PMC could be seen to be using the supply controls in the Act to achieve as close as possible to import parity prices. (Government of Western Australia 2002, p. 6)*

In other words, without the legislative restrictions, the volume (and range) of Western Australian grown potatoes supplied to consumers (in Western Australia and elsewhere) is likely to increase, bringing wholesale and retail prices down, and displacing potatoes from South Australia and, to some extent perhaps, substitute foods.

The Council thus finds that Western Australia has not met its CPA clause 5 obligations arising from the Marketing of Potatoes Act. To meet these obligations the government must remove the supply and marketing controls. Such reform could include a phased transition to help reduce the adjustment costs that existing growers might face.

### *Chicken Meat Industry Act 1977*

Western Australia's Chicken Meat Industry Act 1977 established a central industry committee of grower, processor and independent members, and empowered the committee to set a standard growing price, approve the establishment of growing facilities and determine disputes between growers and processors. The Act also prohibited the establishment of new processing facilities without the approval of the Minister. Regulations made under the Act prescribed a standard growing agreement and gave incumbent growers first right of refusal to meet growing capacity increases sought by processors. The Act contained no statutory exemption from the anticompetitive conduct provisions of the *Trade Practices Act 1974*.

In 2003 the Council assessed that Western Australia had not yet met its CPA clause 5 obligation relating to the Chicken Meat Industry Act because the government had yet to make recommended reforms to the Act's restrictions on competition.

The Department of Agriculture reviewed the Act in 1997. This review recommended:

- retaining the industry committee's power to set a standard growing fee, subject to:
  - allowing growers to opt out of collective bargaining
  - further reviewing this power in five years
- removing controls on entry to the processing and growing sectors, subject to specifying environmental, health and animal welfare standards for the approval of growing premises.

The Act was amended in December 2003 by the *Acts Amendment and Repeal (Competition Policy) Act 2003*, and the amendments were proclaimed in May 2004. As a result, the growing agreement prescribed by Regulation, together with the standard growing fee and the committee's dispute resolution power, apply only where growers and their processor agree. That is, individual growers and their processor may opt out of the statutory centralised bargaining and dispute resolution process. Collective bargaining by growers, whether under the Act or otherwise, remains subject to the Trade Practices Act. There are also now no restrictions on entry to the processing sector.

The government is yet to develop new standards for growing premises. No significantly restrictive criteria are expected to be imposed, and there are avenues, including appeal to the Minister under the Act, for a grower who is aggrieved by a refusal to approve growing premises.

As recommended by the review, the government has retained the requirement that incumbent growers have first right of refusal to meet growing capacity increases sought by processors. This is potentially an important restriction on the opportunity for new growers to enter the Western Australian industry.



The government has argued that the restriction benefits the community by allowing for the development of a more efficient industry structure, evident in the highest average farm size nationally and the concentration of efficient growers in closer proximity to their processors. Generally, barriers to market entry lead to lower rather than higher production efficiency, and the government has not shown why the chicken meat growing industry is special. Nevertheless, the Council believes the first right of refusal provision does not ultimately restrict entry into chicken growing because processors are free to not renew contracts with any existing grower (or, subject to contractual rights and obligations, to terminate a contract), and to contract with a new grower entrant to maintain growing capacity.

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

### **A3 Fisheries**

#### *Fish Resources Management Act 1994*

In the 2003 NCP assessment, the Council found that Western Australia had completed the review of the Fish Resources Management Act but had retained some restrictions on competition without adequately demonstrating the public interest in these restrictions. The key outstanding matters were:

- input based controls on the rock lobster fishery — an NCP review of fishery regulation recommended the government commission an independent update of earlier work on the net benefits of moving to an output based management regime and, in the interim, remove minimum limits on pot holdings and separate pot licensing from boat licensing
- a limit on the number of rock lobster export processing licences — an NCP review of the processing sector recommended the removal of this restriction
- a limit on the number of aquatic tour licences — an NCP review of aquatic tour regulation recommended the government retain this restriction, because a cautious management approach is required until scientific analysis of the industry's impact on the fishery is available, but the Council found that the review did not adequately consider less restrictive alternative measures to meet the objectives of the regulation.

Following the 2003 assessment, the government, via the Rock Lobster Industry Advisory Committee, engaged a consultant to review how the rock lobster fishery should best be managed in future. This review, including consultation with industry, is expected to be completed in late 2006.

The government also decided to remove from the fishing tour operators licensing regime the requirement that applicants for new licences have a prior history and commitment to the industry. Instead applicants for new

licences will only need to show that they will either service an area not serviced by an existing operator, or target fish stock not currently fully exploited.

The Council assesses that Western Australia is still to completely fulfil its CPA clause 5 obligations arising from the Fish Resources Management Act. The key matters outstanding are:

- input based (pot unit entitlements) restrictions in the rock lobster fishery
- a limit on the number of licences authorising export processing of rock lobsters.

In relation to the rock lobster fishery, the government has argued that moving to less restrictive output based controls, such as an individual transferable catch quota, could lead to a substantial increase in enforcement costs. It notes that the fishery is spread over a very long coastline, and that voluntary compliance with fishery controls may fall if a significant portion of the industry does not support change. The review program for the fishery includes extensive consultation with fishers and other parties about the outcome of an independent analysis of alternative management approaches.

The Council supports careful analysis and wide consultation in the review of regulation. Nevertheless, the government has not shown, either by the revised Council of Australian Governments (CoAG) deadline or since, that a less restrictive alternative to the existing controls (such as an individual transferable quota) would not achieve the objectives of the legislation. For this reason, it has not met its CPA clause 5 obligations arising from input based restrictions on the rock lobster fishery.

In relation to rock lobster processing, the government has argued that removing the limit on the number of licences authorising export processing would increase enforcement costs and could harm the Western Australian rock lobster's export reputation for high quality. The Council does not find these arguments convincing, however. First, the government recovers its enforcement costs from operators, so if marginal enforcement costs are signalled to operators, existing and potential operators are likely to make the most efficient decisions about investing in export processing facilities. Second, there are less restrictive alternatives for protecting product quality and reputation, such as accreditation schemes and product branding.

The government has also argued that the export processing sector is already very competitive. This suggests that the net cost of the restriction may not be large, but does not justify restricting competition.

In relation to the licensing of aquatic tour operators the Council accepts that, with the removal of the need for applicants to demonstrate a prior involvement in the industry, the remaining restrictions are in the public interest.

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Western Australia will have met its CPA clause 5 obligations arising from the Fish Resources Management Act when it has:

- removed the limit on the number of licences authorising the export processing of rock lobsters
- announced, following completion of the current review, a firm timetable to implement output based management of the rock lobster fishery, or demonstrated that the existing input based approach is in the public interest.

### *Pearling Act 1990*

In the 2003 NCP assessment, the Council found that Western Australia had completed the review of the Pearling Act but was yet to remove several restrictions on competition as recommended, including:

- minimum limits on holdings of pearling quota
- the coupling of pearl farming licences and pearl fishing licences
- limits on the volume of hatchery-produced pearl oysters allowed to be seeded (a hatchery quota).

The government intends to replace the Act with new legislation but such a Bill is now not expected to be introduced until autumn 2005.

The government policy has been to retain the hatchery quota rather than remove it as recommended by the review. The government is committed to a review of the pearl oyster hatchery policy before its expiry in December 2005. Via this review, it aims to develop a strategy for increasing quota in response to demand pressure and the success of market differentiation programs (such as a proposed Australian appellation and certification program), and for allocating such quota increases (such as through auctions).

The 1999 review (by the Centre for International Economics) recommended removing the hatchery quota because it found that the case for restricting pearl production via a hatchery quota is highly uncertain, although it did not identify clear and significant gains from the quota's removal.

The government has argued that retaining the hatchery quota is an appropriate precautionary response, given that the NCP review found no strong case either way and that a Pearl Producers Association submission to the review gave evidence of a significant net benefit to the community (up to \$21 million per year) from retaining the quota. According to the government, the NCP review erred in dismissing the case made in the submission (including the results of a market research study) without producing contrary evidence.

Australian pearls vary from high quality, for which there is limited foreign competition, to lower quality (about 33 per cent), which compete with supply from Indonesia and the Philippines. Prices have fallen relatively more for lower quality pearls than higher quality pearls. However, there are some constraints on further growth in Indonesian and Philippine supply.

The government has argued that the hatchery quota drives the industry to produce higher quality product and supports prices by promoting confidence in the pearl marketing chain that the market will not be flooded. It has further argued that if the quota were removed, Australian producers might increase volume at the expense of quality, even though they would have difficulty competing with lower cost overseas suppliers of lower quality pearls.

The Council acknowledges the uncertainty that surrounds this issue, but remains unconvinced that the government's response is appropriate in the circumstances. The NCP review carefully considered the submission of the Pearl Producers Association. In addition, the reviewer subsequently provided further analysis to the Department of Fisheries highlighting important sources of doubt concerning the net benefit model employed in the submission. In NCP reviews, where a net public benefit from restricting competition has not been established with reasonable certainty, the NCP presumption in favour of competition obliges governments to remove the restriction.

Moreover, an appellation/certification program as proposed by the government may be a less restrictive alternative to a hatchery quota for protecting the quality and reputation of Australian pearls. Such a program could promote the confidence of consumers (and others in the marketing chain) in the continued rarity of high quality Australian pearls, and thereby protect the pricing power of producers, while allowing the expansion of Australian production of lower quality pearls (for which foreign-produced pearls are close substitutes) unrestricted by a hatchery quota.

The Council assesses that Western Australia has not met its CPA clause 5 obligations arising from the Pearling Act as the legislation continues to impose competitive restrictions that have not been shown to be in the public interest and, while the government intends to remove most of these restrictions, it has refused to remove hatchery quota. The government will have met its obligations when it has removed all restrictions on competition not clearly shown to be in the public interest.

## **A4 Forestry**

### *Sandalwood Act 1929*

Sandalwood is a slow growing native tree that is valued for its aromatic qualities. Most sandalwood is exported to Asian markets as logs that are powdered and used to make incense sticks and ornamental works. The

Sandalwood Act controls the harvesting of sandalwood other than from plantations. Most sandalwood occurs on Crown land in the vast inland rangelands of the state. Around 1.5 per cent of the natural resource is privately owned, and this is concentrated in remnants of native vegetation in the relatively highly developed south west region.

The review of the Act, completed in November 1997, recommended removing the 10 per cent cap on the amount of sandalwood that can be harvested from private land, but retaining total harvest quotas and the licensing of sandalwood harvesters.

In its 2003 NCP assessment the Council found that Western Australia had not met its CPA clause 5 obligations related to the Act because it had not:

- removed, as recommended by the NCP review of the Act, the 10 per cent cap on the harvesting of private sandalwood
- adequately demonstrated the public interest in restricting sandalwood harvesting from private land (via the limit on the total volume of sandalwood that may be harvested from public and private land in any given period, and via licensing).

The *Acts Amendment and Repeal (Competition Policy) Act 2003*, which was passed in December 2003 and proclaimed in May 2004, amended the Act to remove the 10 per cent cap.

Further, the Council now accepts, having considered further information from Western Australia, that using licensing to restrict the harvesting of native sandalwood on private land is in the public interest, most importantly to conserve remnant biodiversity in extensively cleared landscapes.

However, although the review did not recommend removing the limit on the total volume of sandalwood that the industry may harvest, the Council continues to have some reservations that this limit is necessary to achieve the objective of biodiversity conservation and sustainable resource use. The case made for removing the 10 per cent cap on harvesting of private sandalwood — that such objectives can be equally or better achieved by applying other provisions of the legislation and Regulations relating to quantities and areas that can be harvested under individual licences — appears equally applicable to the limit on the total volume of sandalwood harvested. It is arguable, therefore, whether a statewide harvest limit effectively achieves biodiversity conservation and sustainable resource use where these objectives are threatened more in some areas than in others.

Notwithstanding these reservations about whether the review adequately demonstrated the public interest in limiting the total volume of sandalwood that may be harvested, the Council assesses that Western Australia has met its CPA clause 5 obligations arising from the Sandalwood Act.

## **A5 Agricultural and veterinary chemicals**

### *Agriculture and Veterinary Chemicals (Western 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 Western Australian legislation is the *Agriculture and Veterinary Chemicals (Western 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 Western Australia has not met its CPA obligations in relation to this legislation.

### *Aerial Spraying Control Act 1966*

### *Agricultural Produce (Chemical Residues) Act 1983*

### *Veterinary Preparation and Animal Feeding Stuffs Act 1976*

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. Western Australia will implement the review recommendations through amendments to its legislation. The Agricultural Management Bill is being drafted, and the Veterinary Preparations and the Animal Feeding Stuffs Amendment Bill 2003 was introduced to Parliament in 2003 but had yet to pass at the time of this assessment.

Because Western Australia has yet to implement reforms, the Council assesses it as not having met its CPA obligations in this area.

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## **A6 Food**

### *Health Act 1911*

Health (Food Hygiene) Regulations 1993

Health (Game Meat) Regulations 1992

The principal competition restrictions in the area of food hygiene relate to licensing and registration requirements. The National Food Standards Code (including the food safety standards contained in chapter 3 of the code) was adopted in Western Australia by the Health (ANZ Food Standards Code Adoption) Regulations 2001. In 2004 Western Australia will finalise reform of its food legislation with the passage of a new Food Bill, which will replace the relevant part of its Health Act. Western Australia intends to repeal all of its food hygiene Regulations.

Because Western Australia has not completed its reforms, the Council assesses it as not having met its CPA obligations in this area.

## **A8 Veterinary services**

### *Veterinary Surgeons Act 1960*

The Western Australian Government endorsed a review of its Veterinary Surgeons Act in December 2001. The major review recommendations included:

- repealing the restrictions on ownership of veterinary practices by nonveterinarians
- introducing a competency based licensing category known as 'veterinary service provider' to reduce the barriers to entry for nonveterinarians wishing to provide veterinary services
- repealing the advertising provisions and replacing them with voluntary guidelines or a code of conduct
- repealing the restrictive aspects of the premises registration provisions and replacing them with a voluntary code of practice

The recommendations, along with other changes that are not NCP related, will be implemented through a specific amendment Bill. Drafting of the Bill is yet to commence. The Council thus assesses Western Australia as not having met its CPA obligations for veterinary surgeons.

## **B1 Taxis and hire cars**

### *Taxi Act 1994*

The Taxi Act allows the Western Australian Director-General of Transport to prescribe the number of taxi licences by area. The NCP review of the Western Australian taxi industry was completed in August 1999. It recommended removing restrictions on taxi licence numbers, while retaining maximum fares (for a transitional period) and safety and vehicle standards. The government put 25 wheelchair-accessible taxi licences and 100 peak period licences to tender in early 2000. The peak period licences were only for Friday and Saturday nights and for vehicles that could carry six passengers or more. These conditions discouraged the uptake of the licences, with only 35 being issued following the tender.

In July 2003 the government announced reforms that involve leasing around 50 new taxi plates in Perth in the first year and a smaller number of new plates in following years. The 2003 NCP assessment noted this announcement and commented that Western Australia had made some progress towards taxi reform, but concluded that review and reform activity was incomplete.

Parliament passed the Taxi Amendment Bill 2003 on 3 December 2003. In relation to this legislation, the Minister (MacTiernan 2003) noted that the government would release 48 new plates following the closure of applications on 16 January 2004, comprising 32 conventional taxis with a lease cost of \$250 per week (compared with a market lease rate of around \$345 per week), four multipurpose taxis leased at \$100 per week, and 12 peak period plates leased at \$50 per week.<sup>2</sup> The 32 full time plates were released in April 2004, with the Minister observing that these plates were the 'first new full-time plates released for 14 years' (MacTiernan 2004b).

The 48 new taxi plates released in the first half of 2004 are equivalent to around 4 per cent of the total number of plates in Perth. The Minister announced on 10 June 2004 that the government will release an additional 28 plates before Christmas 2004 (these plates have since been tendered), and then an additional 40 new plates in each year from 2005 to 2008. The 40 additional plates each year will comprise 12 multipurpose taxi plates and 28 conventional and peak period plates. These plates will be leased on a basis similar to that of the autumn 2004 release, with the lease price being significantly below the market lease price. The multipurpose plates will continue to be leased at \$100 per week. Potential lessees for new taxi plates will be asked to make tender bids, with the tender criteria relating to the

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<sup>2</sup> The Minister noted that there were 1113 taxis in total in the Perth metropolitan area, comprising 924 conventional taxis, 81 multipurpose taxis, 100 peak period taxis and eight area restricted taxis (MacTiernan 2004a).



quality of driver and service. The government also intends to conduct a review of this five-year plan before its conclusion.

Western Australia does not restrict hire car licences, but operators can accept bookings of only at least an hour, and the detention rate is substantially higher than for taxis.

The announced program of taxi licence releases to 2008 represents significant progress that equates to around a 3.5 per cent annual growth in the fleet's size. The program does not commit Western Australia to ongoing increases in taxi numbers beyond 2008, or to any interim action if the demand/supply imbalance does not improve (see chapter 9). However, while the government does not appear to intend to continue taxi releases until the demand for plates is met fully, it has announced a review of the efficacy of the new arrangements before their expiry.

The Council's relatively low compliance benchmark for taxi reform was established by the positive assessment afforded Victoria in the 2003 NCP assessment. That assessment recognised substantial forward progress in an area in which there was little, if any, will for reform across Australia. While the Victorian regime involves a longer term commitment to de-restricting entry to the industry, the Western Australian program is of a similar ilk. For procedural fairness, the relatively low compliance benchmark established for Victoria suggests that Western Australia's program is sufficient for it to be assessed as (marginally) meeting its CPA obligations. Nevertheless, the achievement of this lower benchmark should be viewed as an interim step toward fully meeting the public interest objectives established by NCP reviews.

## **B3 Dangerous goods**

### *Explosives and Dangerous Goods Act 1961*

The 1998 review of this Act recommended aligning the licensing requirements for the manufacture of explosives with those for other hazardous chemicals, replacing the inspection and licensing arrangements for vehicles used to transport explosives with the system used for vehicles carrying other dangerous goods, and encouraging industry responsibility for health and safety matters relating to the storage of explosives and other dangerous goods.

The government introduced the Dangerous Goods Safety Bill 2002 to the Parliament in December 2002, to repeal the Explosives and Dangerous Goods Act. It stated that the Bill will reduce restrictions on competition while retaining the necessary public interest restrictions on the use of dangerous goods. It also noted that the transport, storage and handling provisions of the Bill are based on national Regulations and standards. Passed by the Lower House of Parliament on 18 June 2003, the Bill was introduced to the Upper

House on 24 June 2003. The 2003 NCP assessment found that Western Australia had not completed its reform activity, because this Bill remained in the Upper House for several months. The Bill was finally passed on 11 May 2004 with amendments. The Legislative Assembly agreed to these amendments on 1 June 2004.

The Council thus assesses that Western Australia has met its CPA clause 5 obligations.

## **B6 Ports and sea freight**

*Jetties Act 1926 and Regulations*  
*Lights (Navigation Protection) Act 1938*  
*Marine and Harbours Act 1981 and Regulations*  
*Shipping and Pilotage Act 1967 and Regulations*  
*Western Australian Marine Act 1982*

The government has not conducted a review of these Acts but proposes to introduce new legislation governing maritime activity. The Maritime Bill and the Maritime and Transport Legislation Amendment and Repeal Bill will repeal the Acts. The two new Bills were introduced to the previous Parliament in 1999 but lapsed when the Parliament was prorogued before the 2001 state election.

The current government intends to redraft the Maritime Bill, partly in response to machinery-of-government changes. At the time of the 2003 NCP assessment, Western Australia had advised the Council that the earliest time for redrafting the Bill would be the second half of 2003. The 2003 assessment found that Western Australia had not completed its review and reform activity.

When the former government first introduced the Maritime Bill 1999, it contended that the Bill's objectives were to enable the provision of infrastructure necessary for the efficient and safe conduct of maritime activities, and to facilitate vessel safety. It added that it sought to replace fragmented legislation with simple and up-to-date legislation. The extent of competition restrictions in the current legislation is not clear, other than that the legislation contains restrictions on competition relating to licensing provisions that the government listed for review. Western Australia subsequently stated that reviews were not required for the Shipping and Pilotage Act and the Western Australian Marine Act.

There has been no review of the legislation and legislative redrafting has not commenced, so the Council confirms its previous assessment that Western Australia has not met its CPA clause 5 obligations in this area.

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## B7 Air transport

### *Transport Co-ordination Act 1966*

This Act provides for the licensing of vehicles (including aircraft) used for commercial purposes and the regulation of the transport services provided by these vehicles. The 1999 review report recommended that this general provision be circumscribed so licences are required only where there is a public benefit. The government endorsed this recommendation and intended to repeal this section of the Act and replace it with provisions that relate to the requirement for a licence to be in the public interest.

The collapse of Ansett in September 2001 had a significant impact on the air transport market in Western Australia, leading the government to further review its intrastate aviation policy. As a result of this review in 2002, the government undertook three key initiatives:

1. For the air routes that connect Perth with major coastal towns (including Exmouth, Carnarvon, Geraldton, Albany and Esperance — the so-called ‘non-jet routes’ with passenger movements below 55 000 to 60 000 per year), the government extended Skywest’s monopoly for the nine months to May 2003. It subsequently extended this licence for another two years, subject to a review being completed by May 2004, after which the government would decide to either deregulate the network from May 2005 or go to competitive tender.
2. The government considered issuing competitive tenders for other routes that cannot sustain competition, involving the tendering of exclusive licences (sole operating rights) for a period of up to three years.
3. The government consulted with some mining companies in the Northern Goldfields area and with other companies in the wider resource sector, to ascertain whether there is scope for consolidating the charter services that they use with the regular passenger transport services to nearby towns.

The 2003 NCP assessment concluded that Western Australia had not completed its review and reform activity in the aviation transport sector, and noted that the precise nature of the prospective legislative reform was unknown.

In May 2004 the Minister for Planning and Infrastructure announced that the government would continue to regulate the non-jet intrastate air services and introduce a tender process for clusters of routes, with the successful tenderers providing the new services from December 2005. The government will retain current monopoly providers on regulated routes until then. It has noted that extending the current monopoly arrangements to December 2005 is necessary to allow potential bidders sufficient time to put together their tender proposals and to prepare for service provision if successful. The

government expects to advertise the tenders around by the end of February 2005 and announce its decision on the successful tenderers around June 2005.

The Council notes that the government's announced direction would establish a competitive tendering approach similar to that adopted in Queensland for regional air services. That model has been accepted by the Council as being consistent with CPA obligations. The Council will monitor Western Australia's progress.

Given that reform activity in Western Australia's aviation transport sector is still in progress, and amendments to the Transport Co-ordination Act are yet to be drafted, the Council assesses that the state is yet to meet its CPA clause 5 obligations in this area.

## **C1 Health professions**

### *Chiropractors Act 1964*

Western Australia completed its NCP review of health practitioner legislation (including the Chiropractors Act) and in April 2001, the government approved the drafting of new template health practitioner Acts to replace the Chiropractors Act and other health professions legislation. These reforms are outlined in the state's *Key directions* paper (Government of Western Australia 2001b). The template legislation was to retain broad practice restrictions across professions (including those for chiropractors). These restrictions were scheduled to be automatically repealed under the template legislation by 1 July 2004, or replaced sooner by specific core practice restrictions, depending on the outcome of the core practices review under way.

The drafting of template health legislation commenced in 2001, while a core practices discussion paper was released in March 2003. However, the state has not completed either reform.

In its 2004 NCP annual report, the state has advised that a package of health practitioner Bills will be introduced to Parliament this year. This package is to comprise the Chiropractors Bill 2004, the Dental Bill 2004, the Optometrists Bill 2003, the Occupational Therapists Bill 2004, the Osteopaths Bill 2004, the Podiatrists Bill 2004, the Nurses Bill 2004, the Physiotherapists Bill 2004 and the Psychologists Bill 2004. However, the government has not yet approved the recommendations of the core practices review, and the review outcomes are unlikely to be integrated into the Bills before they are put to Parliament. The state has subsequently indicated that existing practice restrictions will remain pending the implementation of the core practices review recommendations through an amendment Bill.

In the context of the 2003 NCP assessment, the Council considered that the state's amendments to implement core practice reforms were a significant

issue because they have the potential to deliver substantial benefits to the Western Australian community and the economy more generally.

Given that Western Australia still has not implemented template legislation incorporating core practice reforms, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations regarding chiropractors and other professions subject to the reforms.

#### *Dental Act 1939*

#### *Dental Prosthetists Act 1985*

In addition to general health practitioner reforms, the government's *Key directions* paper (Government of Western Australia 2001b) proposed specific reforms for the dental profession. The state's 2004 NCP annual report has advised that a particular reform allowing dental prosthetists to construct and fit partial dentures will be addressed in the Dental Prosthetists Amendment Bill 2004, which received its second reading in the Legislative Assembly on 12 May 2004.

However, the state has not implemented template legislation, core practice or specific reforms. The Council thus confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform dentistry legislation.

#### *Medical Act 1894*

The two key outcomes of the Western Australian review of the Medical Act were the rationalising of advertising restrictions and the changing of the disciplinary system, including the establishment of a medical tribunal independent of the Medical Board to deal with serious disciplinary matters.

Western Australia's 2003 NCP annual report advised that Cabinet had accepted the review recommendations relating to the Medical Act and had commenced drafting of a Medical Practitioners Registration Bill to replace the current Act. The state also advised that it expected to introduce the Bill into Parliament in the latter half of 2003. The Council thus assessed Western Australia as not having complied with its CPA obligations because it had not completed its review and reform activity.

There does not appear to have been significant reform progress since the 2003 NCP assessment, with the state's 2004 NCP annual report advising that the Medical Practitioners Registration Bill 2004 is still being drafted. This Bill is expected to limit controls on advertising to those reflecting consumer protection provisions (consistent with review recommendations) and remove ownership restrictions.

The state has advised that the timing of new legislation has been influenced by the intention to establish a State Administrative Tribunal (consistent with review outcomes) which has been subject to delays. The Council considers that the government should expedite the resolution of these and other

outstanding issues, where practicable, to reduce delays in implementing reforms.

The Council notes that these proposed amendments are likely to be consistent with clause 5(1) of the CPA. However, given that Western Australia has not implemented reforms to its medical practitioner legislation, the Council confirms its 2003 assessment that the state has not yet met its review and reform obligations for this profession.

### *Nurses Act 1992*

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Nurses Bill 2004 to Parliament this year to replace the Nurses Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors). Given that Western Australia has not yet passed reforms, it has not yet met its CPA obligations in relation to legislation regulating the nursing profession.

### *Optometrists Act 1940* *Optical Dispensers Act 1966*

Western Australia has advised in its 2004 NCP annual report that it expects to introduce an Optometrists Bill to Parliament this year to replace the Optometrists Act. This Bill will clarify that ownership restrictions do not exist for optometrists, and it is part of the state's template health practitioner reforms (see the section on chiropractors).

The Council's 2003 NCP assessment noted that the government's *Key directions* paper (Government of Western Australia 2001b) provided for a review of the Optical Dispensers Act to assess the need for practice restrictions for this profession. In its 2004 NCP annual report, Western Australia advised that following a review outcome that there is no evidence that practices carried out by optical dispensers pose a risk of harm to the public, the state would repeal this Act.

The Council's 2003 NCP assessment considered that restrictions on optical dispensing are unlikely to have a significant impact on competition. However, it noted that the overall package of reforms has the potential to deliver substantial economic benefits to Western Australia.

Given that reforms have not been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating optometrists.

### *Osteopaths Act 1997*

Western Australia has advised in its 2004 NCP annual report that it expects to introduce an Osteopaths Bill 2004 to Parliament this year to replace the

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Osteopaths Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

The Council's 2003 NCP assessment noted that the state is using the Osteopaths Act as model legislation in its health practitioner reforms. However, while the state expects to make only minor amendments to the Act as part of the template legislation reforms, further amendments may be necessary to incorporate the outcomes of the core practices review.

Given that the revised legislation and associated core practice reforms have not been implemented to date, the state has not yet met its CPA obligations to review and reform legislation regulating osteopaths.

### *Pharmacy Act 1964*

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 for further information on the national review process). Compliance with these requirements requires the state to remove these restrictions contained in the Pharmacy Act.

In its 2004 NCP annual report, Western Australia advised that delays in implementing pharmacy reforms have largely been caused by the ongoing debate on this issue. Chapter 19 in relation to pharmacy provides further information in this respect.

In September 2004 the Government endorsed the majority of recommendations of the NCP review of pharmacy and approved the drafting of new legislation to replace the Pharmacy Act. The new legislation will effectively implement the recommendations of the Wilkinson Report as amended by the Senior Officials, in all respects bar one. Rather than remove the cap on the number of pharmacies that an individual pharmacist (or friendly society) may own or have an interest in, Western Australia intends to relax the restriction in line with the Prime Minister's advice to other jurisdictions, particularly Tasmania.

However, these reforms, if implemented by jurisdictions (including Western Australia), fall short of those required by CoAG.

Given that Western Australia has not implemented reforms consistent with CoAG requirements to date, the state has not yet met its CPA obligations in relation to this profession.

### *Physiotherapists Act 1950*

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Physiotherapists Bill 2004 to Parliament this year to replace

the *Physiotherapists Act*. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not yet been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating physiotherapists.

#### *Podiatrists Registration Act 1984*

Western Australia advised in its 2004 NCP annual report that it expects to introduce a Podiatrists Bill 2004 to Parliament this year to replace the Podiatrists Registration Act. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not yet been implemented, the Council confirms its 2003 assessment that the state has not yet met its CPA obligations to review and reform legislation regulating podiatrists.

#### *Psychologists Registration Act 1976*

Western Australia has advised in its 2004 NCP annual report that it expects to introduce a Psychologists Bill 2004 to Parliament this year to replace the Psychologists Registration Act. The Bill is also expected to partially address core practice issues by removing the licensing requirements and the definition of hypnosis from the psychology legislation. This process is part of the state's template health practitioner legislation reforms (see the section on chiropractors).

However, because the revised legislation and associated core practice reforms have not been implemented to date, the state has not yet met its CPA obligations to review and reform legislation regulating psychologists.

#### *Occupational Therapists Registration Act 1980*

The key restriction in the Occupational Therapists Registration Act relating to occupational therapists is title protection. In its 2002 and 2003 NCP assessments, the Council assessed this restriction as being noncompliant with CPA obligations.

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 fees required of applicants for registration restrict entry to the profession of occupational therapy and potentially weaken competition among occupational therapists.



The state has advised in its 2004 NCP annual report that it intends to introduce an Occupational Therapists Bill 2004 to Parliament this year that will retain title restrictions. Western Australia's justification for maintaining title protection is that some activities — such as the use of electromyography — pose a potential risk of harm to the public. The state contends that this risk outweighs the benefits of further competition, so the profession should be regulated.

In the absence of a robust public interest case, the Council does not accept the harm minimisation rationale 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 and independent health complaints bodies. However, while the Council considers that title protection restricts competition, the costs of retaining this restriction are not significant because nonregistrants can still use unrestricted titles.

Given that the pending Occupational Therapists Bill 2004 has not been enacted, the Council assesses the state's review and reform in this area as being incomplete. (If the state retains title protection in any ensuing legislation, it will be assessed as having failed to meet its CPA clause 5 obligations in relation to occupational therapists).

## **C2 Drugs, poisons and controlled substances**

*Poisons Act 1964*

*Health Act 1911 (Part VIIA) (drugs and poisons)*

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

Western Australia has already implemented some recommendations of the Galbally report in advance, by:

- adopting all the scheduling decisions covered in the Standard for the Uniform Scheduling of Drugs and Poisons by reference
- repealing the provisions that apply to licences for substances with low and moderate potential for causing harm, and streamlining conditions that apply to poisons licences in relation to schedule 2.

The state has advised that additional legislative changes addressing the Galbally recommendations will be implemented following the outcome of interjurisdictional processes.

Western Australia has demonstrated a commitment to meeting its CPA obligations by implementing those reforms that could be achieved in the absence of CoAG's final response. The Council considers that other jurisdictions could also have considered such an approach.

However, because the state has not completed its implementation of the Galbally recommendations, the Council assesses that Western Australia has not yet met its review and reform obligations in this area.

## **D Legal services**

### *Legal Practitioners Act 1893*

The *Legal Practice Act 2002* implements many recommendations of the 2002 review of the Legal Practitioners Act. These include changes to create the capacity to allow incorporated legal practices and multidisciplinary partnerships. Further, the State Administrative Bill 2003, if passed, will remove restrictions on the practice of tribunal related work and implement changes to arbitration services, which nonlawyers may undertake consistent with review recommendations.

The state has also indicated that it will consider (in the context of national reforms) the review recommendation to codify the existing practice of allowing practitioners to opt out of insuring through the Law Society if they have secured an appropriate level of professional indemnity insurance through other means.

The Council considers that Western Australia has implemented many recommendations from its NCP review of the legal profession, with further reforms pending in the State Administrative Tribunal Bill 2003. While no discernible progress has been made to implement professional indemnity insurance reforms, the capacity of legal practitioners to opt out of the Law Mutual insurance scheme suggests delays in implementing the reforms may not be significant.

Nevertheless, because the state has not yet implemented outstanding review recommendations, it has not yet met its CPA obligations in relation to the legal profession.

## **E Other professions**

### *Debt Collectors Licensing Act 1964*

Western Australia completed the NCP review of the Debt Collectors Licensing Act in 2003 and Cabinet endorsed the recommendations. The review

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recommended retaining, for public interest reasons, the licensing arrangements, trust account provisions, the requirement to lodge a fidelity bond and the upper limit on fees that debt collectors can charge. It also recommended extending licensing to cover employees and making debt collectors responsible for licensing their employees. The review found other restrictions were not in the public interest. It recommended removing the limits on fees that debt collectors charge, and the requirement for written contracts between creditors and debtors. It also recommended reducing the age restriction for a licence from 21 to 18 years of age and replacing the annual licence with a three-year licence, but conducting random inspections of trust accounts to ensure compliance. The necessary amendments have not yet been drafted.

Because Western Australia has not implemented the review's recommendations, the Council assesses it as not having met its CPA obligations in this area.

### *Motor Vehicle Drivers Instructors Act 1963*

A review of the Motor Vehicle Drivers Instructors Act and Regulations was completed and presented to the government in October 2003. The review identified the major restriction in the Act to be that a person wishing to act as a driving instructor, within the meaning of the Act, must be licensed and, therefore, must meet the Act's licensing requirements. The review considered alternative means of achieving the legislative objectives and found that these approaches did not achieve the legislative objectives as efficiently as the current licensing process.

The review recommended that the Act be retained, finding that the principal competition restrictions (relating to qualifications for driving instructors) are in the public interest. The review also proposed amendments that revolve primarily around safety and probity matters.

The government endorsed all the review recommendations, except a recommendation to amend the Regulations to require duplicate controls on every vehicle 'utilised', rather than 'provided', by a driving instructor in the course of driving instruction. The recommendation would have precluded learner drivers from gaining licensed instruction in their own vehicles, and was considered unnecessarily restrictive.

The government has approved the drafting of the legislative amendments required to implement the recommendations of the review. The remaining recommendations will be implemented via regulatory amendment in the *Government Gazette*, or administratively as required.

Although Western Australia has not implemented all of the recommended reforms, the review determined that the key restrictions on competition are in the public interest. Accordingly, the Council assesses that Western Australia has met its CPA obligations in this area.

### *Pawnbrokers and Second-hand Dealers Act 1994*

The government endorsed the recommendations of the second review of the Pawnbrokers and Second-hand Dealers Act and prepared amending legislation — the Pawnbrokers and Second-hand Dealers Amendment Bill 2003 — which is awaiting Cabinet endorsement. The review recommended placing general licence conditions in the Regulations rather than on individual licences, making illegal the repurchasing of goods by pawnbrokers, increasing fines for serious breaches of licence conditions, having separate licences for separate business premises, and requiring dealers to display their licence number to the public.

Because Western Australia has not implemented reforms, the Council assesses it as not having complied with its CPA obligations in this area.

### *Real Estate and Business Agents Act 1978*

Western Australia endorsed the review of the Real Estate and Business Agents Act in February 2003 but is yet to introduce amending legislation. The review recommended:

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

Because Western Australia has not implemented reforms, the Council assesses it as not having complied with its CPA obligations in this area.

### *Travel Agents Act 1985 and Regulations*

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.

Western Australia advised that Cabinet endorsed the findings of the national review on 23 June 2003 and has commenced implementation of the proposed reforms.

For the removal of the exemption for Crown-owned business entities, Western Australia gazetted an Order under the Travel Agents Act in December 2003, which effectively repealed the exemption for other state and territory Crown-owned business entities operating in Western Australia. Removal of the exemption for Western Australian Crown-owned business entities requires legislative amendment. Western Australia proposes to include this amendment in the Consumer Protection Legislation Amendment and Repeal Bill 2004.

For the lifting of the current licence exemption threshold to a turnover of \$50 000 per year, Western Australia implemented an amendment by Order (gazetted in December 2003) under the Travel Agents Act.

Western Australia has not met its CPA obligations in relation to travel agents legislation because it has not yet completed its reform activity.

### *Auction Sales Act 1973*

The Ministry of Fair Trading completed an NCP review of the Auction Sales Act in 2001. The review found that licence fees, the licence application process and the 'fit and proper' person test do not appear to have significantly restricted access to the industry. However, although the costs of the licensing system (reduced competition, less innovation, higher prices) had been small, it could not be demonstrated that the benefits (greater consumer confidence, easier enforcement) outweighed these costs. The review concluded that it is not in the public interest to continue with the current licensing arrangements for auctioneers.

However, the review process revealed a need to consider the adequacy and scope of the provisions of the Act, and to investigate the need to include other provisions to regulate auctions and ensure fair competition. It recommended, therefore, that a general review of the Act be undertaken to consider alternative mechanisms of regulation (such as negative licensing, registration or certification) as replacements for the Act's occupational licensing provisions. The Department of Consumer Protection is finalising the general review in line with the recommendations of the NCP review.

Western Australia will have met its CPA obligations in relation to auctioneers when it removes the licensing arrangements for auctioneers either separately or as part of its response to the general review of the Act.

### *Settlement Agents Act 1981*

Western Australia has legislation permitting nonlawyers to undertake certain activities traditionally reserved for legal practitioners, including

conveyancing. The review of the Settlement Agents Act found a net public benefit in licensing settlement agents but recommended several reforms, including:

- replacing the requirement for agents to have 'sufficient material and financial resources' with more specific requirements
- removing the residency requirement
- replacing caps on the maximum fees that an agent can charge with a disciplinary offence of receiving or demanding an excessive fee and giving the board the power to order repayment of an excessive fee received
- retaining the requirement for agents to hold professional indemnity and fidelity insurance, but permitting licensees to choose their insurer.

Cabinet endorsed the review recommendations in May 2002. The required amendments to the Act are being progressed, together with amendments to the *Real Estate and Business Agents Act 1978*, in a Bill that is being developed.

The Council assesses Western Australia as not having met its CPA obligations in this area because it has not completed reforms.

### *Employment Agents Act 1976*

In October 2003 the government announced its acceptance of the recommendations of its review of the Employment Agents Act. The review recommended:

- replacing the requirement for employment agents to be licensed with a negative licensing scheme
- relaxing the requirement to provide employees with a 'Notice of Employment' where provision of such notice is impractical, subject to the consent of the employee
- removing the need to seek approval of a scale of fees chargeable to employers
- allowing fees to be negotiated between employment agents and employers but precluding agents from demanding or receiving any fee that is unjust, where there is no prior agreement.

The review also recommended retaining the prohibition against the charging of fees to employees, and the requirements relating to the provision of statements of account to employees.

Western Australia is yet to give effect to the review recommendations, so the Council assesses it as not having met its CPA obligations in this area.

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*Hairdressers Registration Act 1946*

Western Australia's Hairdressers Registration Act applies to hairdressers working in the Perth metropolitan area, in the South West Land Division and within an eight-kilometre radius of the Kalgoorlie general post office. The Act aims to establish minimum quality and health and safety standards in the hairdressing industry. To be registered as a hairdresser, a person must satisfy the Hairdressers Registration Board that they are of good character, complete an appropriate course of training and pass appropriate examinations. The Act also places restrictions on the operation of hairdressing businesses and the type of hairdressing duties that a registered hairdresser can undertake.

A review of the Act recommended that registration be retained and extended to apply to the whole state. It found that the public interest is best served by requiring hairdressers to be qualified to maintain hygiene and sanitation to reduce the risk of physical harm to customers and to provide higher quality services. In February 2003 the government endorsed the recommendation to retain the hairdressers' registration scheme.

In its 2003 NCP assessment, the Council assessed Western Australia as not having complied with its CPA obligations in relation to hairdressers because the state had not provided a sufficiently robust public benefit case to support its retention of licensing. The Council noted too that the review did not adequately consider less restrictive alternatives such as negative licensing.

In its 2004 annual report to the Council, Western Australia has maintained that registering hairdressers is in the public interest because 'there is no evidence that the quality of service is of a different standard in parts of Western Australia where registration is required compared with other parts of Western Australia or other jurisdictions where similar registration requirements do not apply' (Government of Western Australia 2004, p. 52). The presumption of the CPA is that restrictions on competition should be removed if they cannot be shown to be in the public interest. That is, the burden of proof rests with a government wishing to retain regulation, which must demonstrate that the restriction provides a public benefit. The statement above suggests that Western Australia cannot demonstrate a net public benefit from the regulation, only that registration leaves consumers in regulated areas no worse off than those in unregulated areas.

Western Australia further argues that registration, because it is granted only to hairdressers that achieve minimum competency standards, protects consumers from unqualified operators. However, it is possible to require hairdressers to hold appropriate qualifications without requiring registration (as in New South Wales, for example). Such a requirement, in conjunction with general health and safety obligations, appears to offer consumers adequate protection.

Western Australia questions whether negative licensing would be suitable for the hairdressing industry. The 2004 NCP annual report states that because there is 'a significant number of unqualified or semi-skilled people already

practising hairdressing in a regulated environment, negative licensing would prove impossible to monitor and police and would have to rely upon consumers to identify the operators involved' (Government of Western Australia 2004, p. 53). However, it is not clear to the Council why the establishment of negative licensing procedures that empower consumers in this way is inappropriate.

The Council maintains its previous assessment that Western Australia has not demonstrated a net public benefit from hairdresser registration and, therefore, has not complied with its NCP obligations in this area.

## **F1 Compulsory third party motor vehicle and workers' compensation insurance**

### *Motor Vehicle (Third Party Insurance) Act 1943*

In Western Australia, compulsory third party motor insurance is provided by a statutory monopoly under the Motor Vehicle (Third Party Insurance) Act. The previous government endorsed the legislation review of compulsory third party insurance in 2000, which recommended multiple provision. The current government withdrew amending legislation in 2001 and decided not to pursue any reforms. In its 2004 NCP annual report, the government has advised that the current arrangements should be left untouched while the compulsory third party scheme remains financially sound.

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

### *Workers Compensation and Rehabilitation Act 1981*

In Western Australia, multiple provider arrangements operate in relation to workers compensation insurance. Consequently, there is no principal restriction on competition occasioned by statutory monopoly provision. Following the completion of the NCP review of workers compensation in early 2002, the government expects to introduce minor legislative amendments to Parliament in spring 2004. Following discussions with officials, the Council is satisfied that these amendments will not affect the multiple provision of workers compensation insurance in Western Australia.

The Council assesses Western Australia's review and reform of the Act as having met its CPA clause 5 obligations in this area.



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## F2 Superannuation

### *State Superannuation Act 2000*

In February 2003 the Western Australian Government endorsed the recommendations of a 2001 review of the State Superannuation Act and Regulations. The review was undertaken by an independent consultancy, and the terms of reference required the consultant to focus on the government's objectives in the Act, identify the competition restrictions and assess their benefits and costs, and consider alternative means of meeting the legislation's objectives.

The review confirmed that the Act's main restriction on competition is the requirement that employer contributions for most public servants' superannuation be paid solely to the Government Employees Superannuation Board. The review recommended that the board's status as sole superannuation provider for most public servants should be maintained on public interest grounds associated with the government's minimisation of its financial risks arising from funding the public superannuation schemes, maintaining scale and cost efficiencies within the Government Employees Superannuation Fund, the liquidity of fund investments and the prudential protection of superannuation members. Like Queensland, Western Australia referred to the fact that most individuals have a limited understanding of superannuation, and concluded that offering choice may lead to lower retirement benefits for public sector employees than provided by the current arrangements.

The government introduced, from 1 July 2001, a choice of investment type for members of West State Super (the only public sector superannuation scheme open to new employees) for both employer and voluntary contributions: members can choose from a portfolio of products offered by the Government Employees Superannuation Board. The board, in turn, outsources the management of the assets in its superannuation fund. It selects specialist fund managers in a competitive process and regularly reviews their performance.

Western Australia's review of its public sector superannuation legislation was conducted in accord with the CPA clause 5 guiding principle. It argued that the benefits of the board's sole provision of public sector superannuation services for most public servants outweigh the costs. The Council assesses that Western Australia has met its CPA obligations for this legislation.

## G1 Shop trading hours

### *Retail Trading Hours Act 1987 and Regulations*

Western Australia's Retail Trading Hours Act:

- restricts Monday to Saturday trading hours for all shop categories to prescribed opening and closing times. 'Small' retail shops and 'special' retail shops have longer opening hours than those of 'general' retail shops.<sup>3</sup>
- prohibits Sunday trading for 'general' retail shops outside tourism precincts.

On 24 June 2003 the government announced that:

- retail trading hours in the Perth metropolitan area would remain unchanged until after the next state election in early 2005
- from 2 May 2005, weeknight trading hours would be extended to 9 pm
- a review of trading hours would take place three years after the date of assent to the Bill which implements the above change.

The Bill was, however, rejected by the Legislative Council on 19 August 2004.

In its 2003 NCP assessment, the Council did not consider that the changes announced by the Western Australian government, involving the retention of restrictions until 2005, constituted an appropriate transitional reform measure underpinned by a public interest case. Since that assessment, the only development has been the Parliamentary rejection of these limited reforms. Western Australia is the only jurisdiction in which significant restrictions continue to apply to trading hours. The government has not publicly released a review report or provided a sufficiently robust public interest case to support the retention of restrictions that have been largely removed in all other jurisdictions without adverse social or economic impacts.

The Council thus confirms its previous assessment that Western Australia has not met its CPA clause 5 obligations in relation to shop trading hours.

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<sup>3</sup> The Act distinguished between 'general', 'small' and 'special' retail shops according to their size or types of good sold. General retail shops are larger, nonspecialist retailers such as department stores and larger supermarkets.

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## G2 Liquor licensing

### *Liquor Licensing Act 1988* and Regulations

Western Australia's Liquor Licensing Act contains two significant competition restrictions:

1. A needs test requires licence applicants to satisfy the licensing authority that the licence is necessary to provide for the requirements of the public, given the number and condition of licensed premises existing in the affected area, their distribution, and the extent and quality of their services. Objection to the granting of a licence may be made on the grounds that the licence is unnecessary to provide for the requirements of the public.
2. There is discrimination between hotels and liquor stores: liquor stores are prohibited from trading on Sundays, when hotels may open from 10 am to 10 pm.

Western Australia's review reported in March 2001. It recommended that:

- the granting of a licence should depend on the licensing authority being satisfied that the licence is in the public interest, and that the authority in assessing the public interest, should not consider the impact of competition on individual competitors.
- Sunday trading hours for hotels and liquor stores should be the same with both types of outlet permitted to trade on Sundays between 10 am and 10 pm.

In September 2003, the government announced a package of reform measures to take effect from 1 July 2005, including:

- the replacement of the public needs test with a public interest test
- a simplification of licence types
- provision for outlets engaged in similar activities to open during the same hours. This will enable liquor stores to trade at the same times as hotels, including Sundays.

In its 2003 NCP assessment, the Council assessed Western Australia as not having complied with its CPA obligations in relation to liquor licensing, noting that the government had not provided a public benefit case to support delaying its reforms until 2005.

In March 2004 the government announced that it would not proceed with the proposed reforms because it considered that they would not be passed by the Legislative Council. Instead, Western Australia proposed to undertake an independent review of the legislation. In June 2004 Cabinet agreed on the

terms of reference for a review of the Liquor Licensing Act. In September 2004 the Government appointed a Review Committee and the Committee called for public submissions in October 2004. The Committee has been given a six-month period to undertake the review.

The Council thus confirms its assessment that Western Australia has not met its CPA clause 5 obligations in this area.

### **G3 Petrol retailing**

#### *Petroleum Products Pricing Amendment Act 2000*

#### *Petroleum Legislation Amendment Act 2001*

Western Australia has a series of fuel pricing measures that affect petrol retailing. Fuel pricing is regulated primarily through the Petroleum Products Pricing Amendment Act and the Petroleum Legislation Amendment Act. Restrictions include:

- a requirement that retailers fix their prices for at least 24 hours and notify these prices to the Department of Consumer and Employment Protection for publication on its FuelWatch web site (the 24 hour rule)
- maximum wholesale price arrangements
- the right of a retailer to purchase 50 per cent of petroleum products from a supplier other than the primary supplier (50/50 legislation)
- mandatory price boards to be displayed in all regional centres.

Both Acts were subject to an NCP review by the Department of Consumer and Employment Protection. The review found that regulation of the petroleum industry is in the public interest because it protects consumers, encourages stability in pricing and provides for transparency in pricing.

In its 2003 NCP assessment, the Council noted the findings of two Australian Competition and Consumer Commission (ACCC) reports on fuel price variability (ACCC 2001 and 2002). The ACCC's 2001 report found that industry participants did not support the arrangements in Western Australia. It also found that the state's legislation had no consistent impact on prices. The ACCC's 2002 report found that the restrictions did not appear to be achieving their objectives (that is, there had been no material change in the variation of price cycles, and their duration had increased marginally) and are likely to have an adverse effect on competition by restricting the ability of independent sellers to adjust their prices. The 2003 NCP assessment also contained details of Western Australia's response to the ACCC's findings.

In 2003 Western Australia wrote to the Council contesting the ACCC's finding that industry participants did not support the fuel pricing

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arrangements in Western Australia. The letter quotes an anonymous refiner/marketer who expresses support for the arrangements. Western Australia's 2004 NCP annual report to the Council contains price data indicating that the underlying differential between Western Australian prices and those of Sydney and Melbourne is approximately 0.3–0.35 cents per litre when the cost impact of higher standard fuel is removed. Western Australia has maintained that this cost is justified by the better price information its 'FuelWatch' provides to consumers. In correspondence with the Council, Western Australia estimated the regulatory and compliance costs associated with its pricing arrangements as being \$1.12 million, and the price benefits to motorists as being \$85 million. It also informed the Council in July 2004 that Perth motorists faced the lowest average ULP price in mainland Australia in March and April 2004. Allowing for a government rebate in Brisbane and Melbourne, the government estimates that Perth motorists paid, on average, 2.5 cents per litre less than Adelaide motorists, 2.3 cents per litre less than Brisbane motorists and 1.3 cents per litre less than Melbourne and Sydney motorists. In October 2004, Western Australia provided further evidence to support its view that the legislation provides a net benefit to the community.

As in 2003 the Council is confronted with conflicting views from the Western Australian Government and the ACCC concerning the public benefits of Western Australia's fuel pricing restrictions. While the Council acknowledges that the arrangements are not overly expensive to administer, and that Western Australian fuel prices may be below those of other jurisdictions at times, the evidence of the ACCC casts doubt on whether the restrictions provide consistently lower fuel prices or less volatile and shorter fuel price cycles. The possibility (refuted by Western Australia) that its arrangements may also deter the ability of independents to respond quickly to prices (potentially influencing their decision to operate in that market) is also of concern to the Council. Western Australia's fuel pricing legislation has been in operation for almost three years since the initial in-house review was completed. It would be appropriate for a properly constituted independent review to evaluate the conflicting views on the impact of the legislation during this period using the considerable amount of evidence now available.

The Council considers that Western Australia is yet to demonstrate that its petrol pricing restrictions provide a net public benefit and thus confirms its 2003 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

### Environmental Protection (Diesel and Petrol) Regulations 1999

Western Australia introduced higher fuel standards via the Environmental Protection (Diesel and Petrol) Regulations 1999. The specifications for unleaded petrol are not currently matched by any other state or territory, although national unleaded petrol standards will align with the Western Australian specifications in 2006, with the exception of the methyl tertiary butyl ether (MTBE) additive and aromatics.

The limit for MTBE will be 0.1 per cent in Western Australia as opposed to 1 per cent in the federal standards. The limit on aromatics will be 42 per cent in Western Australia, compared with a 42 per cent pool average over six months with a cap of 45 per cent for the Australian Government. The Regulations have the potential to reduce competition by making it more difficult to import fuel into Western Australia, leaving the only refinery in Western Australia as a virtual monopolist at the wholesale level.

Western Australia conducted a review of the fuel standards Regulations and the government endorsed the findings in February 2001. The review considered that the benefits of higher standards are:

- the likelihood of reduced morbidity and mortality due to improved air quality
- the likelihood of reduced health care costs due to improved air quality
- the avoidance of expensive treatment cost to remediate potable groundwater contaminated with MTBE
- improved occupational health and safety in the mining industry, especially in underground operations.

The higher standards impose a cost of approximately 1.62 cents per litre. Western Australia has drawn the Council's attention to a survey by the Royal Automobile Club in which the majority of respondents indicated they were willing to pay up to an extra 2 cents per litre for cleaner fuel. Western Australia considers that the benefits of higher standards outweigh the costs, and that other jurisdictions are moving to the higher standard for this reason. Western Australia will complete a further review of its MTBE levels before 1 January 2006.

The Council has no evidence that Western Australia's environmental concerns, particularly in relation to groundwater pollution, do not justify the adoption of the higher standard before other jurisdictions.

The Council thus assesses Western Australia as having complied with its CPA clause 5 obligations in relation to fuel standards.

## **H1 Other fair trading legislation**

### *Retirement Villages Act 1992*

The government endorsed a review of the Retirement Villages Act in May 2002. The review recommendations included:

- amending restrictions on the use of retirement village land

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- incorporating the Act and the Code of Fair Practice for Retirement Villages into a single Act
  - amending restrictions on the marketing and price determination rights of residents.

The review recommended retaining the Act's remaining restriction on competition, which relates to parties' representation in proceedings before the Retirement Villages Disputes Tribunal. Western Australia is drafting amendments to enact the recommended reforms.

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

## H2 Consumer credit legislation

### *Credit (Administration) Act 1984*

Western Australia has completed NCP reviews of the Credit (Administration) Act. The reviews recommended that the Act be amended to:

- replace the licensing requirement for credit providers with a system of registration coupled with negative licensing
- replace the prohibition against persons having a business as a credit provider when in partnership with an unlicensed person, with a provision prohibiting a registered person from having a business in a partnership with a person who has been prohibited from having such a business under the proposed negative licensing provisions.

Cabinet endorsed the review report on 4 August 2003, but Western Australia is still to implement the endorsed recommendations.

The Council thus assesses that Western Australia has not met its CPA clause 5 obligations in this area.

### *Hire-Purchase Act 1959*

The review of the Hire-Purchase Act found that the introduction of the Consumer Credit Code had made most of the Act's provisions redundant. It found that the following provisions, however, are justified on public interest grounds:

- the requirement for credit providers to refund any surplus amount following the repossession of goods
- the court's power to re-open 'harsh or unconscionable' hire-purchase arrangements

- restrictions on credit providers' ability to repossess farming goods.

The Hire-Purchase Act was amended by the *Acts Amendment and Repeal (Competition Policy) Act*, so only the above three provisions of the Act continue to apply to new transactions. The amendments were effective from 1 May 2004.

The Council assesses Western Australia as having met its CPA clause 5 obligations relating to the Hire-Purchase Act

### **H3 Trade measurement legislation**

#### *Weights and Measures Act 1915*

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). Western Australia has not reviewed its legislation, but will adopt the changes agreed at the national level by replacing its Act with new legislation.

Because the national review and reform of trade measurement legislation have not been completed (see chapter 19), Western Australia has not been able to repeal its Weights and Measures Act and replace it with new legislation. The Council thus assesses Western Australia as not having met its CPA clause 5 obligations because the state has not completed its reforms.

### **I1 Education**

#### *Education Service Providers (Full Fee Overseas Students) Registration Act 1992*

Western Australia is reconsidering its response to the review of the Education Service Providers (Full Fee Overseas Students) Registration Act. The review concluded that the legislative requirements dealing with the registration of education service providers are in the public interest and should be retained. Outstanding minor issues identified by the review include:

- the reasons for the differential treatment arising from exemptions provided to some private schools under the Regulations



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- the need to review the policies and guidelines that underpin the Act, in accordance with changes to the Australian Government's *Education Services for Overseas Students Act 2000* and the *Migration Act 1958*
  - the uniformity of audit conditions with other statutory providers such as universities and TAFE colleges.

The Council notes that the review found that the Act's major restriction on competition is in the public interest. The remaining issues do not appear to be significant competition issues. The Council thus assesses that Western Australia has met its CPA obligations for this Act.

*Curtin University of Technology Act 1966*

*Edith Cowan University Act 1984*

*Murdoch University Act 1973*

*University of Notre Dame Australia Act 1989*

*University of Western Australia Act 1911*

Western Australia completed legislation reviews of its universities' enabling Acts in 1999. The reviews concluded that most restrictions are minor and in the public interest, while recommending that the investment powers of Edith Cowan University be aligned with those of other universities. The state's *Acts Repeal and Amendment (Competition Policy) Act 2004* implemented this recommendation. The government has also required universities to adopt competitive neutrality principles as recommended by a competitive neutrality review of the university business activities.

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

## **12 Child care**

*Community Services Act 1972*

Community Services (Child Care) Regulations 1988

The state's NCP legislation review program did not include the 1988 Regulations. Nevertheless, the Department of Community Development carried out an NCP review of the Community Services Act and the Community Services (Child Care) Regulations, which was completed in June 2002 and endorsed by Cabinet in February 2003. The legislation regulates child care and the registration of child carers in Western Australia.

The review recommended retaining the restrictions in both the Act and Regulations because they are in the public interest, and expanding the Regulations' current three-yearly review process to encompass day care outside of school hours. Another recommendation was to consider, via the

three-yearly review process, changing prescriptive regulations to a more outcome based system within the regulatory framework.

The Children and Community Services Bill, which implements review recommendations and replaces the Community Services Act and the Community Services (Child Care) Regulations, was passed in September 2004.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

## **13 Gambling**

### *Casino Control Act 1984*

### *Casino (Burswood Island) Agreement Act 1985*

Western Australia's *Casino Control Act 1984* requires a licence for the operation of a casino. The review of this Act recommended retaining this requirement and restrictions on the conduct of casinos and casino games. The exclusivity period for the Burswood Casino licence expired in December 2000, but the Casino (Burswood Island) Agreement Act still provides considerable protection by restricting casino games to licensed casinos and requiring that persons wishing to establish another casino within 100 kilometres of the Burswood Casino must house the casino in a complex of similar magnitude. Western Australia's review recommended that the government consider negotiating with the Burswood Casino operators to remove or relax remaining restrictions, but only after undertaking a full public benefit assessment.

The Western Australian Government maintains that the restrictions are of no practical effect because it has a policy of not granting new casino licences in the Perth area. It considers that additional licences would increase the harm posed by problem gambling if greater access to gambling facilities, particularly table games, were made available to the community. It also considers that the costs of removing restrictions or changing current government policy appear to far outweigh the potential benefits from generating intrastate competition in the casino gaming market.

The Council notes the key legislative restriction — the exclusive casino licence period — has expired and accepts that current arrangements provide a public benefit by limiting access to both table games and, more importantly, gaming machines. (Unlike other jurisdictions, the Burswood Casino is the only location for gaming machines in the state.)

The Council thus assesses Western Australia as having complied with its CPA obligations in relation to casino legislation.

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### *Totalisator Agency Board Betting Act 1960*

Western Australia's Totalisator Agency Board Betting Act (repealed in 2003) provided for an exclusive off-course totalisator licence. Western Australia's review recommended that the legislation should allow the Minister to grant additional off-course totalisator licences if the Government considers this to be in the public interest. Western Australia initially considered this recommendation in the context of a review of the governance structure of its racing industry. It decided to retain an exclusive licence for the newly formed racing industry governing body, Racing and Wagering Western Australia, established under the *Racing and Wagering Western Australia Act 2003*, to give the organisation time to establish and to consolidate its racing and wagering activities before possibly facing competition.

In its 2004 NCP annual report, Western Australia has advised that it has taken no further action to amend its legislation, on the basis that licensing additional operators may:

- expand opportunities for gambling
- jeopardise funding to the racing industry.

The Council has reservations about both arguments. There is already easy access to totalisator outlets throughout Western Australia. The 2004 NCP annual report even claims the provision of uneconomic totalisator facilities to remote areas is a virtue of current arrangements. Also, the granting of additional licences could be made conditional on appropriate payments to the racing industry (and the provision of remote area facilities, if this is a government objective).

The Council assesses Western Australia as not having met its CPA obligations in relation to totalisator licensing because the state has not demonstrated a public benefit from indefinitely continuing the exclusive totalisator licence.

### *Betting Control Act 1954*

### *Totalisator Agency Board Betting Act 1960*

### *Racing Restrictions Act 1917*

### *Racing Restrictions Act 1927*

### *Western Australian Greyhound Racing Association Act 1981*

Western Australia's racing legislation restricted racing to thoroughbred, harness or greyhound racing, restricted the business structures of bookmakers and set minimum telephone and Internet bet limits with bookmakers. Western Australia completed reviews of the above Acts and replaced them with new legislation.

The *Betting Legislation Amendment Act 2002* implemented most recommendations of the review in relation to betting, including the establishment of corporate licensing structures for bookmakers and the

removal of the restriction on bookmakers fielding only during race meetings. Minimum telephone and Internet bet limits with bookmakers were removed, with effect from 1 July 2004.

The racing restrictions Acts have been repealed and replaced with the *Racing Restrictions Act 2003*. Amendments to the Western Australian Greyhound Racing Association Act included the repeal of Part IV of that Act, which related to restrictions on meetings. The *Racing and Wagering Western Australia Act 2003* came into force in January 2004 establishing Racing and Wagering Western Australia as the new governing body for all of Western Australian racing. This body has an exclusive right to conduct off-course totalisator betting. The new legislation implements several reforms arising from NCP reviews and gained assent on 26 June 2003.

The Council assesses Western Australia as:

- having complied with its CPA obligations in relation to the Western Australian Greyhound Racing Association Act because the new legislation removes previous restrictions on meetings
- not having complied with its CPA obligations in relation to the other legislation because the replacement legislation, while implementing several reforms in relation to bookmakers, continues to provide for the exclusive licence to conduct off-course totalisator betting discussed earlier in this chapter.

### *Gaming Commission Act 1987*

In January 2004, the Gaming Commission Act was amended to the *Gaming and Wagering Commission Act 1987*. Western Australia's NCP review of the then Gaming Commission Act concluded that the existing allow the government to appoint a lotteries supplier other than the Lotteries Commission. The review recommended a less restrictive regulatory framework that provides for the government to license operators other than the Lotteries Commission if in the public interest.

In its 2004 NCP annual report, Western Australia has advised that it has taken no further action to amend its legislation, on the basis that licensing additional operators may:

- expand opportunities for gambling
- jeopardise the distribution of money to hospitals, the arts, sport and community groups from Lotterywest, the current licence holder.

The Council has reservations about both arguments. There is already easy access to lottery outlets throughout Western Australia, and, Western Australia claims, as it did when defending the exclusive TAB licence, that the provision of uneconomic lottery gambling opportunities to remote areas is a virtue of current arrangements. Also, the granting of additional licences could be conditional on appropriate payments to designated community funds.

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The Council thus assesses Western Australia as not having complied with its CPA obligations in relation to this Act.

### *Lotteries Commission Act 1990*

Western Australia also completed a review of the Lotteries Commission Act and associated rules in 1997. This Act provides for the powers and rights of the Lotteries Commission. The review recommended retaining the restrictions in the Act in the public interest. It is not clear whether the current powers of the Lotteries Commission are consistent with the more competitive lotteries market recommended by the review of the Gaming Commission Act.

Western Australia reviewed the application of competitive neutrality to the Lotteries Commission and found that this would not provide a net public benefit. It considers that the implications of not applying competitive neutrality principles to the Lotteries Commission are minimal while there is only one licensed provider of lotteries. The government has indicated that if another lotteries provider is considered for licensing, it will reassess whether to apply competitive neutrality principles to the Lotteries Commission. Any such reassessment of competitive neutrality would necessarily examine any potential competitive advantages that may exist in the Lotteries Commission Act.

The Council assesses Western Australia as having complied with its CPA obligations in relation to the Lotteries Commission Act because the review recommendations require no legislative action.

### *Gaming Commission Act 1987 (as it relates to minor gaming)*

Minor gaming in Western Australia is regulated by the Gaming Commission Act, which was amended in January 2004 to the *Gaming and Wagering Commission Act 1987*. A review of the Act was completed in 1998 and recommended:

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

- licensing professional fundraisers.

As the government is still considering its response to the review recommendations, the Council assesses it as not yet complying with its CPA obligations for minor gambling.

## **J1 Planning and approval**

*Town Planning and Development Act 1928*

*Western Australian Planning Commission Act 1985*

*Metropolitan Region Town Planning Scheme Act 1959*

Western Australia listed several planning Acts for review under its NCP program, including the Town Planning and Development Act, the Metropolitan Region Town Planning Scheme Act and the Western Australian Planning Commission Act. These Acts provide for controls on land use, which have the potential to hinder the entry of new competitors by impeding commercial development. Delays in planning approval can also inhibit competition. The previous Western Australian Government developed the Urban and Regional Planning Bill 2000, which consolidated this legislation. The NCP review examined both the proposed and existing legislation, but the change of government in November 2001 meant that the review was not submitted to Cabinet.

The current government re-activated the consolidation of the planning legislation with the release of a position paper in April 2002. The Council noted in 2003 that the government planned a new Planning and Development Bill following the receipt of submissions on the position paper. The 2003 NCP assessment found that the government had not completed reform activity.

The government received a number of submissions on the position paper and introduced the Planning and Development Bill and the Planning and Development (Consequential and Transitional Provisions) Bill to Parliament on 30 June 2004. These Bills follow a public consultation process. In introducing the Bill to Parliament, the government stated that the objectives of the new legislation are to consolidate and simplify fragmented legislation, and to provide a clearer, certain and workable planning system. The Government considers that the legislation will enhance the achievement of government planning policy and sustainable land use. The Bills were passed in the Legislative Assembly on 23 September 2004, but have yet to be passed by the Legislative Council.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because it did not complete its reform activity.

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## **J2 Building regulations and approval**

### *Local Government (Miscellaneous Provisions) Act 1960 and Building Regulations 1989*

Western Australia reported in 2003 that new legislation was being drafted to replace the Local Government (Miscellaneous Provisions) Act and the Building Regulations 1989. The 2003 NCP assessment found that review and reform activity in this area was incomplete.

Western Australia's 2004 NCP annual report noted that the new legislation will establish a framework for building Regulations and a process for granting building approval. The legislation will adopt the Building Code of Australia as the primary building standard, introduce competition into the building approval and certification process, and provide a registration scheme for qualified building surveyors. The Australian Building Codes Board publishes the Building Code of Australia, which establishes national building standards. Western Australia noted that the Productivity Commission is conducting a research study (to be completed in November 2004) into the contribution that the national building regulatory reform under the auspices of the Australian Building Codes Board has made to building sector productivity. The study will inform national consideration in 2005 of the role of the Board and the Building Code of Australia. Western Australia will await the national review of the Code before implementing its new building legislation. The government is considering amending the Local Government (Miscellaneous Provisions) Act in the meantime to introduce contestable certification services for building approvals.

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

## **J3 Building occupations**

### *Architects Act 1921*

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

Western Australia endorsed the legislative review of its Architects Act in December 2001, and the national working group's response to the Productivity Commission's 2000 report on architectural regulation. In March 2002 Cabinet approved the drafting of amendments to the Act in response to the review and the working group's report. The Architects Bill 2003 is in keeping with the review recommendations:

- Membership of the Architect's Board will be broadened to include industry, consumer and educational representatives.
- The Bill does not include restrictions on practice; it protects title only.
- The title 'architect' will be restricted to registered persons only, but derivatives that describe a recognised competency are permitted (for example, landscape architect or architectural draftsman).
- Organisations that offer the services of an architect must have adequate arrangements to ensure an architect supervises, controls and is ultimately responsible for the architectural work provided.
- Requirements for registration will be moved to the Regulations and refer to a national standard-setting body, the Architects Accreditation Council of Australia, which is developing a broader system of certification that accounts for different combinations of qualifications and experience.

The public consultation period for the Architects Bill 2003 closed on 4 April 2003. The major change arising from the public consultation period is that half of the Architect's Board will be comprised of registered architects to provide the necessary architectural understanding for the board to carry out its functions. The Architects Bill 2003 was passed in the Legislative Assembly on 5 May 2004, and second read in the Legislative Council on 6 May 2004. The Legislative Council then referred it to the Parliament's Standing Committee on Uniform Legislation and General Purposes Committee. The standing committee tabled its report on 29 June 2004, recommending minor changes that the government is likely to accept. The government anticipates that the revised legislation will be passed in the second half of 2004.

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

### *Licensed Surveyors Act 1909*

This Act provides for:

- the licensing and regulation of surveyors based on the applicant's ability to provide proof of investment in continuing professional development
- surveyors whose licence certificate has been suspended to be able to apply for its reinstatement
- surveyors to hold professional insurance cover.

The review of the Licensed Surveyors Act and the *Strata Titles Act 1985* was completed in 1998 and recommended retaining these restrictions on public benefit grounds. The review also recommended broadening the make-up of the Land Surveyors Licensing Board to include consumer representation, and



replacing the requirement for licensed surveyors to be of good fame and character with provisions determining eligibility to practise.

The reforms were implemented in the Acts Amendment and Repeal (Competition Policy) Bill 2002, which was passed in November 2003 and received royal assent on 15 December 2003.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

#### *Valuation of Land Act 1987*

The review of this Act recommended defining the eligibility for the position of Valuer-General less narrowly, removing the requirement that any person making a valuation for rating and taxing purposes must be licensed, and encouraging a greater flow of information for the purposes of making valuations. The review recommended retaining several restrictions on public interest grounds.

Following the review, amendments to the Valuation of Land Act consistent with the review's recommendations were progressed via the Acts Amendment and Repeal (Competition Policy) Bill 2002 which passed in November 2003 and received royal assent on 15 December 2003.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

#### *Electricity Act 1945 and Electricity (Licensing) Regulations 1991*

Western Australia's Electricity Act and Electricity (Licensing) Regulations establish the framework for the occupational regulation of electricians. They provide for licensing and the reservation of practice, and establish entry requirements and disciplinary procedures. Western Australia conducted a review in 1999-2000 that involved comprehensive community consultation. This review found a public interest case for the licensing of electricians.

The 2003 NCP assessment reported that Western Australia had endorsed the review recommendation that licensing of electricians is in the public interest, but was planning to conduct a further review of some provisions. In July 2004, however, Western Australia informed the Council that the review had also recommended retaining restrictions on electrical engineers and 'do-it-yourself' electrical work, contrary to earlier advice that provisions relating to these matters still required examination. (The Council notes that Western Australia intends to amend its electricity Regulations later in 2004, including a change to enable electrical engineers to undertake electrical work previously available to electricians only.) Because Western Australia's appropriately constituted review found that the restrictions in the Electricity Act and associated Regulations were in the public interest, the Council assesses Western Australia as having met its CPA clause 5 obligations.

### *Gas Standards Act 1972*

#### Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999

In Western Australia, the Gas Standards Act and the Gas Standards (Gasfitting and Consumer Gas Installations) Regulations 1999 provide that only a person with the appropriate gasfitter's licence may carry out gasfitting work on a consumer's gas installation. The Act and Regulations deal with the licensing of gasfitters, registration, entry requirements (knowledge and skills, and a 'fit and proper' person's test) and the reservation of practice.

The 2003 NCP assessment found that review and reform activity in this area was incomplete. In March 2004 the government endorsed the review of the legislation which concluded that the restrictions on gasfitters (relating to competency and behaviour) are in the public interest. In its 2004 NCP annual report to the Council, the government noted that it was reviewing the competitive impact of requirements relating to the safety manufacturing standards of gas appliances. Western Australian officials subsequently informed the Council that the requirements do not restrict competition.

The Council thus assesses Western Australia as having met its CPA clause 5 obligations in this area.

### *Painters Registration Act 1961*

The first review of Western Australia's Painters Registration Act found that the current system of mandatory licensing of registered painters is too restrictive and should be removed. The review proposed negative licensing to support a certification system, whereby persons who do not adhere to basic standards of commercial conduct are removed from the industry.

The government was concerned about the rigour of the first review and initiated a second review. This review had not been completed when the 2003 NCP assessment was finalised, and the Council found that review and reform activity was incomplete. The government subsequently endorsed the second review in October 2003. The review recommended that the government remove the regulation of 'do-it-yourself' painting and reduce or remove licensing requirements for certain market segments. It found that the registration of painters minimises transaction costs for consumers in locating competent painters, protects the security of householders, reduces unscrupulous behaviour and promotes apprenticeships. However, registration also involves administration costs that painters pass on to consumers, and restricts entry to the industry (this latter cost was not quantified). The review argued that the benefits of registration exceed the costs.

The Council notes for the record its reservations about the review findings that the benefits exceed the costs. Nevertheless, it assesses that Western Australia has met its CPA clause 5 obligations in this area.