14 Western Australia

A1 Agricultural commodities[1]

Grain Marketing Act 1975

Western Australia's *Grain Marketing Act 1975* prohibited the exporting of barley, canola and lupins other than by the Grain Pool of Western Australia. A National Competition Policy (NCP) review of the Act by the Department of Agriculture in 2000 recommended that the Western Australian Government retain the export monopoly until the Australian Government removed its bulk wheat export monopoly. Following strong criticism of this review report, in April 2002 the department proposed that the government allow other parties to export grain in bulk where not in direct competition with the Grain Pool. In August of that year, the Minister for Agriculture and the National Competition Council agreed on legislative reform to sunset the state's grain export restrictions on removal of the Commonwealth's wheat export restrictions and, in the interim, to:

- remove all restrictions on the export of barley, canola and lupins in bags and containers
- prohibit the export of these grains in bulk unless under licence, and grant the Grain Pool the main export licence
- establish an independent authority to license bulk exports by other parties.

The Minister and the Council further agreed that the licensing authority would:

- be predisposed to granting export licences to other parties, provided it is satisfied this would not significantly undermine any price premium that the main licence holder captures through the exercise of market power
- obtain an annual independent assessment of the existence and extent of price premiums resulting from the market power available to the main licence holder.

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[1] The alpha-numeric descriptors for legislation review subject areas are listed in chapter 9, table 9.11.

Accordingly the government introduced new legislation to Parliament and, the *Grain Marketing Act 2002* was passed in November 2002, repealing and replacing the 1975 Act.

In the 2003 NCP assessment the Council welcomed this legislative change but found that the reforms were incomplete because the regulations and guidelines provided for by the Act were still to be issued. It considered these regulations and guidelines important for maximising confidence among growers, traders and customers in the predictability of the licensing regime by ensuring, as agreed with the minister, that the Grain Licensing Authority (GLA) would be predisposed to granting export licences and would obtain an annual independent assessment of market power related price premiums.

The government released the Regulations and guidelines in September 2003. The Council was satisfied that the guidelines adequately addressed the need for annual independent assessment of market power related price premiums. However, it found considerable uncertainty remained about how the authority would decide:

- which grain export markets returned market power related premiums to Grain Pool PL (GPPL, formerly the Grain Pool) and whether a proposed export would affect any such premiums to a significant extent (refer s31(2) and (3) of the Act)

- whether a proposed export would harm the state's reputation as a grain exporter and/or the grain industry generally (refer s31(4) of the Act).

The Council thus responded to the minister that it would also scrutinise the performance of the authority in its first season of operation.

In its 2004 NCP assessment the Council recognised that licences issued by the authority had brought a significant degree of additional competition to the Western Australian grain accumulation market, and that the export licensing arrangements represented an important milestone in the development of Australia's grain industry.

However the Council was also concerned that some licence applications had been delayed or denied where market power-related price premia were not at risk. The GLA had adopted a policy of restricting the volume of grain exports by parties other than GPPL out of a concern that, particularly in years of lower grain production, the state's reputation as a grain exporter and the grain industry generally may suffer if competition left GPPL with insufficient grain to supply its regular customers. While consistency of supply is important to some grain customers the GLA failed to explain why GPPL should not have to compete to obtain sufficient grain for these customers from Western Australian growers or from growers elsewhere via its joint ventures with ABB Grain Ltd and with Elders. The Council was therefore not convinced that ensuring sufficient grain supply for GPPL was a necessary consideration for the GLA.

The Council argued that more competition in the exporting of grain would be of net benefit to the community and an important prerequisite for more competition was to make the licensing process more predictable. The Council advocated the amendment of the ministerial guidelines to set out clear and specific criteria for the GLA 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 sections 31(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 section 31(4)).

In view of these matters, and the minister's commissioning of a review of the Act by accounting and advisory firm RSM Bird Cameron, the Council decided to finalise its assessment in 2005.

The minister released the report of RSM Bird Cameron's review in January 2005 (RSM Bird Cameron 2005). The review concluded that the benefits of the Act and licensing by the GLA exceeded the costs, compared with the pre-reform arrangements. It estimated a net benefit to growers of $3.37 million in the first year of operation of the new arrangements. It noted that growers were becoming better informed about the grain market, that they now had more marketing and financial options, that some growers had increased their returns while some others had suffered decreased returns, and that the reform had drawn more investment into the industry.

The review also noted the Council's call for more clarity in the ministerial guidelines, stating:

> *In our opinion if these matters are appropriately addressed it would result in a far more transparent process and have greater understanding from the industry participants.* (RSM Bird Cameron 2005, para 2.35)

Following the consideration of responses from interested parties to the review report, the minister announced on 30 June 2005 that there would be no changes to the Act or ministerial guidelines.

The minister has not taken the steps towards improving the predictability of the licensing arrangements which the 2004 NCP assessment argued were necessary for compliance with CPA clause 5. Grain exporters and growers nevertheless have more certainty about how the GLA exercises its licensing powers.

Various studies have revealed that GPPL has little ability to drive up grain prices in export markets through restricting supply (see box 14.1). Grain exporters can therefore be confident that, with the possible exception of the Japanese feed barley market, applications for export licences are unlikely to be declined on the grounds that their proposed export poses a significant threat to a market power-related premium captured by GPPL.

Box 14.1: Analysis of market power-related price premiums

In May 2004 the GLA-hired agribusiness analysts Farm Horizons to complete the first independent annual assessment of market power-related price premiums captured by GPPL. Farm Horizons examined 15 markets identified by GPPL as 'core' to its business but found that 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 January 2005 the Minister for Agriculture released for comment RSM Bird Cameron's review of the Grain Marketing Act and the GLA. This review considered various studies commissioned by the GLA to test for evidence of price premiums resulting from the exercise of market power. On this issue the review concluded, 'there are no markets in which the GLA could conclude on the basis of the evidence produced to date that the GPPL has any market power'.

In October 2005 the Minister released the GLA's report for the 2004-05 season including the second independent annual assessment of market power-related price premiums captured by GPPL. Prepared by Storey Marketing this assessment found that overseas buyers do not pay more for Australian grain than grain from other sources, after adjusting for inherent quality or service benefits, except for particular circumstances in Japan. The report concludes that 'the exertion of market power to raise prices in very competitive global grain markets is highly unlikely. The opportunity to "hold the line" on market prices and capture a freight benefit for WA growers through supply control does exist'. While the assessment suggests that the GPPL may be able to utilise its market power to capture premiums that are available due to freight advantages in some markets, the consultant was not provided with sufficient data by the Main Licence Holder to confirm this.

In relation to the other key licensing consideration—the impact of proposed grain exports on the state's reputation as a grain exporter and on the grain industry generally—the GLA clearly recognises the benefits that competition has brought. Its latest report to the minister welcomed the findings of the RSM Bird Cameron review and presented further evidence that competition in the export cash grain market has lifted cash prices and indicator pool prices for feed barley and canola, better reflecting the shipping cost advantages enjoyed by Western Australia in exporting grain to Asian and Middle East markets.

The GLA's report also indicates that for the most important prescribed grain, feed barley, it is now not overly concerned that GPPL's ability to supply 'core' markets could be threatened by licences awarded to other exporters. The report presents statistical analysis showing that in 9 years out of 10 barley production is expected to significantly exceed the level which the GLA considers necessary for GPPL to meet demand from its 'core' markets.

The GLA's recent licensing decisions seem to confirm that, with more experience and analysis under its belt, it is taking a somewhat more liberal approach. So far in the 2005-06 season it has accepted export licence applications for a total volume of 783 000 tonnes, compared with 572 000 tonnes licenced for the whole of the 2004-05 season, and declined two

applications[2] totalling 98 000 tonnes, compared with 475 000 tonnes declined for 2004-05.

In the interests of certainty for exporters and growers the Council would prefer that the GLA expressly renounce any concern for protecting the availability of grain volume to GPPL. GPPL remains the dominant exporter of prescribed grains in Western Australia, accounting for around 90 per cent of grain exports in the last two seasons, and has recently announced a move to acquire grain on its own account in South Australia and Victoria. However the Council is satisfied that, in the absence of more specific ministerial guidelines, the GLA is moving steadily, albeit cautiously, in the right direction.

The Council also considers Western Australia's export licensing arrangements represent the most important reform of an export-oriented grain single desk under NCP[3]. This liberalisation substantially exceeds that achieved so far by the Australian Government in the export wheat market or the South Australian Government in the export barley market, notwithstanding the lack of evidence that either single desk is in the public interest. Western Australia's reforms are clearly benefiting growers and others in that state and are thereby demonstrating to other jurisdictions the value of bringing competition and choice all the way from overseas markets to the farm gate.

The Council has therefore decided that Western Australia has satisfactorily met its CPA clause 5 obligations in relation to the Grain Marketing Act.

Marketing of Potatoes Act 1946

The growing and marketing of potatoes in Western Australia are controlled under the *Marketing of Potatoes Act 1946*. The Act prohibits the production of potatoes in Western Australia for fresh domestic sale unless licensed by the Potato Marketing Corporation. These licences restrict land available for growing potatoes for fresh consumption but not for processing or export. The Potato Marketing Corporation sets wholesale prices and pools sale proceeds, paying growers an average return after deducting its own costs. Grower payments reflect grading and volume but not variety.

The Department of Agriculture completed a review of the legislation in December 2002. The review recommended that the government maintain the current regulated supply system, given the lack of evidence that any major changes would result in improvement in the public interest. It also recommended that the government investigate ways to improve the operation of the Act.

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2 Not including one application for an extension of a licence from the 2004-05 season.

3 Victoria, Queensland and, in 2005, New South Wales have all fully deregulated their former grain export single desks. However in these states exports are relatively less important.

The government confirmed in 2003 that it would retain the regulation of supply management and price fixing. In July 2004, following advice from an advisory group, the Minister for Agriculture announced that the government would bring to Parliament amendments 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 Potato Marketing 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.

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).

The government is yet to bring forwards these legislative amendments. Nevertheless it has already made some changes. The Potato Producers' Committee has taken over by he marketing promotion functions under the *Agricultural Produce Commission Act 1988*, and the Potato Marketing Corporation no longer competes in the export market. The Council agrees that the changes 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.

The Council has not been convinced, however, that restricting the supply and pricing of table potatoes brings benefits to the community that outweigh the costs, or that the objectives of the legislation can be achieved only by restricting competition. The 2002 NCP review of the Act, in finding that evidence for a net public benefit from deregulation was inconclusive, reversed the presumption required by the CPA clause 5 (that is, the presumption that legislation should not restrict competition unless in the public interest).

Subsequently, the government argued that a retail price survey commissioned by the Potato Marketing Corporation shows that Western Australian consumers enjoy cheaper potatoes than do 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., The retail price survey reveals nothing about, for example, whether, Perth prices for most desired table potato varieties, without the restrictions, 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* [Potato Marketing Corporation] *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 down wholesale and retail prices, and displacing potatoes from South Australia and, to some extent perhaps, substitute foods.

The Council thus continues to find 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 its potato supply and marketing controls. Such reform could include a phased transition to help reduce the adjustment costs that existing growers might face.

A3 Fisheries

Fish Resources Management Act 1994

Western Australia's Fish Resources Management Act provides a framework for the management of the state's wild fisheries and aquaculture. Most of the specific restrictions are imposed by subsidiary instruments such as Regulations, management plans, notices and licences.

The legislation has been subject to several NCP reviews. A review of the provisions regulating the rock lobster processing industry, completed by ACIL Consulting (now ACIL Tasman) in December 1998, recommended that the government:

- remove limits on the number of processing licences and convert existing 'restricted' processing licences (for processing for domestic market consumption only) to 'unrestricted' licences
- allow licence holders to establish facilities at multiple locations.

The government announced in 2002 that it accepted these recommendations in part. Since 1 July 2003, there has been no limit on the number of licences

for processing rock lobster for domestic market consumption, and holders of 'unrestricted' processing licences may operate multiple receival facilities. The processing of rock lobster for export remains restricted.

The review of the fishery related provisions was completed by the Department of Fisheries in 1999. It recommended in relation to the rock lobster fishery that the government:

- commission an independent update of earlier work on the net benefits of moving to an output based management regime

- in the interim, remove the minimum and maximum limits on pot holdings, and separate pot licences from boat licences.

The government responded to these recommendations in 2002 by announcing that the existing management arrangements, other than the 150 pot maximum holding, would remain until December 2006 pending a review of the benefits and costs of moving to output based management. Also, the maximum pot holding limit was removed from July 2003. The management review is progressing, with economic modelling completed in August 2005, and consultation with the industry scheduled to begin in October 2005.

In relation to other fisheries, the second review recommended retaining the existing restrictions on competition, but integrating NCP principles into the ongoing fisheries management review cycle. Since the review, the department has implemented a Competition Policy Assessment and Compliance Report system to ensure all new or amending legislation, Regulations and Ordinances are assessed within the NCP framework. The system involves operational and policy staff at the early stages of regulatory development. The department is also working towards all fishery licences and related entitlements being transferable by December 2005.

The department reviewed the licensing of aquatic tour operators in 2003. Following this review, the government removed the requirement that applicants for new licences have a prior history and commitment to the industry. Instead, applicants for new licences need only 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 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 noted that

the fishery is spread over a 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 Council therefore welcomes recent advice that the Department of Fisheries has started a new review as to whether the limit on rock lobster export processing licences is in the public interest. This review will include opportunities for input from the industry and the general public and is expected to be concluded in early 2006.

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

The Pearling Act regulates the supply of cultured pearls from Western Australia. Most pearls are exported. The industry consists of three main sectors: the wildstock harvesting sector, the hatchery sector and the farming sector. The Act's restrictions on competition are many and often complex, but the key restrictions are that:

- the volume of wildstock harvested is limited by a total allowable catch and associated individual transferable quota
- access to pearl oyster wildstock and cultivation is restricted to holders of pearling licences with at least 15 quota units
- the volume of hatchery produced oysters is limited by individual transferable quota (known as hatchery quota/options)
- entry to the hatchery sector is restricted to holders of hatchery licences with a pearling licence or a commercial relationship with a pearling licence holder
- export sales of hatchery spat and oysters are prohibited
- hatchery produced oysters must be no greater than 40 millimetres when sold to pearl farms; otherwise, they are deemed to be wildstock and subject to wildstock quota
- entry to the farming sector is restricted to holders of pearl farming leases also holding either a pearling or hatchery licence
- oysters transferred to a pearl farm become the property of the farm lease holder
- foreign ownership of licence/lease holders is prohibited.

In addition, the executive director of the Department of Fisheries has considerable discretion in exercising responsibilities such as approving entitlement transfers. There is no administrative tribunal to review decisions of the executive director.

A review of the Act, completed by the Centre for International Economics in 1999, advocated substantial regulatory change. Specifically, it recommended:

- removing the minimum limit on holdings of pearling quota
- decoupling pearl farming licences from pearl fishing licences
- auctioning temporary increases in wildstock quotas
- removing hatchery quotas without delay
- codifying in Regulation the criteria for fishery management decisions
- establishing an independent review tribunal.

On 25 March 2002, the Minister for Agriculture, Forestry and Fisheries announced that the government had accepted most of the recommendations, but not those to remove limits on hatchery quotas and to auction temporary increases in wildstock quotas.

Implementation of these recommendations continues to await new legislation, to be known as the Pearling Management Bill. Drafting instructions and an NCP 'gatekeeping' review have been prepared and Cabinet approval for drafting the new bill will shortly be sought, but the timing of introduction to Parliament is as yet unknown.

In the meantime, the government, via the Pearling Industry Advisory Committee (PIAC), has reviewed its policy of limiting the volume of hatchery produced oysters. This review compares the benefits and costs of deregulation against a controlled growth option, which could involve retaining hatchery limits but also provide scope for additional allocations of hatchery quota. A draft Hatchery Policy Statement will be made available for public comment before the committee considers it in October and advises the Minister. A decision is scheduled to occur before the current arrangements expire on 31 December 2005.

The Council assesses that Western Australia has not met its CPA clause 5 obligations arising from the Pearling Act, because the legislation continues to impose competitive restrictions that have not been shown to be in the public interest. The government will have met its obligations, most importantly, when it has removed:

- 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)

or produced new evidence to show these restrictions are in the public interest.

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 Agricultural and Veterinary Chemicals (Western Australia) Act.

The Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. Until changes to these Acts are finalised, the reform of state and territory legislation that automatically adopts the code cannot be completed.

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 Preparations 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 new legislation, the Biosecurity and Agricultural Management Bill (formerly the Agriculture Management Bill), which is being drafted for introduction to Parliament before the end of 2005. The Bill will repeal the Aerial Spraying Control Act and the Agricultural Produce (Chemical Residues) Act and include all control of use provisions under the one Act (other than the commercial operators licensing provisions under the Health Act). The Veterinary Preparations and the Animal Feeding Stuffs Act was amended in 2004 to allow regulations to be made for the control of use of veterinary chemicals. That Act is now the *Veterinary Chemical Control and Animal Feeding Stuffs Act 1976* and it will also be superseded by the proposed Biosecurity and Agriculture Management Bill and regulations.

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

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. Western Australia intends to 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 the outcome of 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.

Cabinet approval for drafting amendments is expected shortly and, subject to this, an amendment bill may be passed in the autumn 2006 session of Parliament.

The Council assesses that Western Australia is yet to meet its CPA clause 5 obligations arising from the Veterinary Surgeons Act as restrictions on competition remain which have not been shown to be in the public interest.

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 and Regulations

The Western Australian Government initially advised the Council that, rather than review these five Acts and 20 Regulations, it would replace them with new consolidated maritime legislation. And, in 1999 the government introduced a Maritime Bill and a Maritime and Transport Legislation Amendment Bill to the Parliament. The legislation was not passed before the 2001 state election where a change of government ensued and the bills subsequently lapsed. The Council has continued to assess that the state has not met its CPA obligations in relation to this legislation.

In 2004, the Council advised that, notwithstanding the government's stated intention to introduce new maritime legislation, the original Acts had not been reviewed. The Council considered it likely that not all of the Acts would contain significant competition restrictions and therefore advised Western Australia that it would be in the state's interests to conduct a legislation review, particularly in light of the protracted timeline for completing a separate review to develop new overarching maritime legislation.

In September 2005, the government informed the Council that an independent NCP review of the legislation had been completed by the Allen Consulting Group. The government indicated that it did not intend for the NCP review to lead to amendments to the five Acts but, rather, to inform the separate review of the Maritime Bill. The Council is satisfied that this approach minimises the scope for 'double adjustment' of legislation.

The Allen Consulting Group review identified that the Acts contain several notionally restrictive provisions. It did not consider these to be competition restrictions per se because they are, for example, technical in nature and underpinned by international and industry-wide codes and standards (such as the National Standard for Commercial Vessels) or had met NCP principles in other fora, such as the regulation impact assessment process of the National Marine Safety Committee.

However, the review identified some other, potentially more significant types of competition restrictions. It noted:

- instances of occupational regulation which it assessed provide a net public safety benefit. It recommended that the restrictions be retained but consideration be given to increasing their clarity.

- instances of licensing of products and services, but assessed that they provide a net public benefit by protecting human life and facilitating

management of marine resources. It recommended that licensing be retained, but consideration be given to adopting competitive methods for allocating licences.

- a provision in the Marine Harbours Act that provides tax and land acquisition advantages to government businesses. It found the provisions to be anti-competitive and recommended their removal.

- instances of operational regulation of products and services, but determined that they provide a net public benefit in protecting property and/or that they comply with national codes for marine safety.

On balance, with the exception of the provisions that breach competitive neutrality principles, the review assessed that the restrictions are in the public interest, being focussed principally on ensuring safety and efficiency in marine activities. It also assessed that the restrictions meet the objectives at reasonable cost and that alternative approaches are limited.

The review did not, however, give unqualified support for the Acts. It observed that the government, in developing new replacement legislation, should undertake some administrative housekeeping to improve the efficiency of some measures. For example, it considered that:

- some minor provisions that extend beyond safety and the efficient operation of the maritime industry should be removed

- the approvals process for occupational licensing needs to be fully transparent and based on quality-related criteria

- the scope for issuing licenses for scarce resources on a competitive basis should be explored

- the legislation should be performance based rather than prescriptive.

The Council agrees with the review's suggestions and urges the government to take these into account when developing its new maritime legislation. In relation to the five Acts, the Council concurs that the Marine and Harbours Act contains competition restrictions that are not in the public interest, whereas the other four Acts and associated Regulations contain restrictions that are either trivial or have been assessed as being in the public interest.

As noted, the government does not intend to amend directly the current Acts. The purpose of the NCP review was to inform the broader development of the government's overarching maritime legislation and to identify the nature and extent of competition restrictions in the current legislation. On that basis, the Council is satisfied that the Western Australian Government has met its CPA clause 5 obligations in relation to the Lights (Navigation Protection) Act, the Shipping and Pilotage Act, the Western Australian Marine Act and the Jetties Act because these Acts have been found to have minor competition restrictions that are in the public interest.

In relation to the Marine and Harbours Act, the Council assesses that Western Australia has not met its CPA clause 5 obligations. It will do so when the Act is repealed, provided that the provisions that breach competitive neutrality are not imported into the new maritime legislation.

B7 Air transport

Transport Co-ordination Act 1966

The Transport Coordination Act provides for the licensing and regulation of aircraft used for commercial purposes. The 1999 review recommended that this provision be circumscribed so licences are required only where there is a public benefit. The government endorsed this recommendation and intended to repeal the relevant 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, however, led the government to again review its intrastate aviation policy and to confer Skywest with a monopoly licence for the provision of aviation services on 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 subsequently extended Skywest's licence, subject to a review being completed by May 2004.

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 route clusters, with the successful tenderers providing the new services from December 2005. The 2004 NCP assessment found that Western Australia had not met its CPA obligations because reform of intrastate aviation was still in progress.

In March 2005, the Department for Planning and Infrastructure wrote to the Council describing the features of its proposed tender arrangements:

- The government would call for tenders to provide aviation services for the coastal and northern goldfields clusters (or networks), with a proportion of the profitable Perth–Geraldton route assigned to the two networks, to facilitate cross-subsidisation of the marginal or loss-making routes in each cluster.

- If one airline was ranked first for both networks, that applicant would be given a first option to choose the network it wished to operate, and the remaining network would be offered to the second ranked applicant. The government believed two operators would ensure continuity of aviation services in the event of one airline going out of business.

The Council expressed its concern that the proposed arrangements would involve non-transparent cross-subsidies. In its November 2000 communiqué, COAG agreed that community service obligation payments or subsidies should be transparent, appropriately costed and directly funded by governments. While seeking to maintain appropriate air services for regional communities is consistent with Western Australia's NCP obligations, doing so by engineering cross-subsidisation from Geraldton passengers was not consistent with openness and transparency.[4]

However, when Western Australia advised the Council of its intention in late March 2005, the government was already well advanced in planning the network tenders. The Council was conscious that adverse implications might have arisen for industry certainty and investment if Western Australia were to make substantial late changes to the tender arrangements. Accordingly, it met with the Department for Planning and Infrastructure on 30 March 2005, and agreed that an adverse competition payment recommendation would be unlikely to arise from the government's intention to tender the networks in the proposed configurations, provided that the government:

- formally announced, at or before the time the tenders were let, that it would conduct an independent NCP review before the completion of the five-year tender period (say, after three years)

- either concurrently (or as part of a two-stage process leading into that NCP review) conduct a robust analysis of the comparative costs and benefits of cross-subsidies under network tender arrangements versus direct budget funded subsidies targeted to only the marginal aviation routes.

In its 2005 NCP annual report, the government advised that new competitively tendered regional aviation services are due to be operational on 1 January 2006. Subsequent discussions with officials from the Department of Treasury and Finance (8 August 2005) confirmed that:

- all tenderers were advised that an independent NCP review would be conducted before the end of the five-year tender period

- the review would compare the costs and benefits of cross-subsidies, direct budget funded subsidies and no intervention.

On the basis of the future reviews to which the government committed when it announced the tenders on 20 April 2005, the Council assesses that Western Australia has met its NCP obligations.

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[4] By contrast, the Queensland Government adopted a NCP compliant approach to intervention in certain thin regional aviation routes, which involves awarding periodic tenders on the basis of the lowest direct subsidy requirement. These fully transparent, costed and direct budget funded subsidies accord with COAG's principles for delivering community service obligations.

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 underway.

The drafting of template health legislation commenced in 2001, while a core practices discussion paper was released in March 2003. In its 2004 NCP annual report, the state advised that it anticipated introducing legislation in 2004. In its 2005 NCP annual report, it advised that divergent opinion is still among professionals affected by the recommendations from the core practices review. Consequently, it decided to introduce an interim package of legislation as a priority, which maintains existing practice restrictions but implements other reforms. Following this process, the government will further consider the recommendations of the core practices review and introduce separate amending legislation to deal with practice restrictions.

In June 2005, the government introduced an interim package of legislation comprising the Chiropractors Bill 2005, the Occupational Therapists Bill 2005 (which removes broad practice restrictions and provides for title protection for occupation therapists only), the Osteopaths Bill 2005, the Physiotherapists Bill 2005 and the Podiatrists Bill 2005. It is still finalising Bills for dental professionals, optometrists, nurses and psychologists. The government advised that it plans to introduce reforms for these professions to Parliament in 2005.

For 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 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 Dental Prosthetists Amendment Bill 2004 was introduced as a private members Bill to allow dental prosthetists to construct and fit partial dentures. In its 2005 NCP annual report Western Australia advised that this Bill lapsed in the Legislative Assembly on 23 January 2005. As noted above, however, it is finalising Bills for dental professionals, which it plans to introduce to Parliament in 2005.

Given that the state has not implemented template legislation, core practice or specific reforms, the Council considers that the state has not 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. The Western Australian Government accepted the recommendation of the review, and in its 2003 NCP annual report, advised the Council that it had commenced drafting a Bill that would limit controls on advertising to those reflecting consumer protection provisions (consistent with review recommendations) and remove ownership restrictions. Progress has been affected, however, by delays in the establishment of a State Administrative Tribunal. In its 2005 NCP annual report, the state advised that it has implemented the *State Administrative Tribunal Act 2004* establishing the tribunal.

Western Australia's reform progress in this matter has been slow. Given that Western Australia has not implemented reforms to its medical practitioner legislation, the Council considers that the state has not met its review and reform obligations for this profession.

Nurses Act 1992

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Nurses Bill 2005 to Parliament later 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 met its CPA obligations in relation to legislation regulating the nursing profession.

Optometrists Act 1940
Optical Dispensers Act 1966

Western Australia advised in its 2005 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 if a review finds no evidence that practices carried out by optical dispensers pose a risk of harm to the public, then the state would repeal this Act. The Optical Dispensers Repeal Bill 2005 was read for a second time in the Legislative Assembly on 18 May 2005.

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 considers that the state has not met its CPA obligations to review and reform legislation regulating optometrists.

Osteopaths Act 1997

Western Australia advised in its 2005 NCP annual report that it has introduced the Osteopaths Bill 2005 to Parliament to replace the 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, the state has not 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 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 all but one of the recommendations of the Wilkinson report as amended by the senior officials. 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 of November 2004 that.

> *Provided Western Australia, as a minimum, relaxes ownership restrictions to allow pharmacists to own up to four pharmacies each and permits … friendly societies to own up to four pharmacies each, Western Australia will not attract competition payments deductions.*

Accordingly, an individual pharmacist will be allowed to have a pecuniary interest in four pharmacies, with the same limit to apply to friendly societies. The government intends to review the expansion in the cap from two to four in two years.

As noted in the 2004 NCP assessment, 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, the state has failed to meet its CPA obligations in relation to this profession.

Physiotherapists Act 1950

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Physiotherapists Bill 2005 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 considers that the state has not met its CPA obligations to review and reform legislation regulating physiotherapists.

Podiatrists Registration Act 1984

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Podiatrists Bill 2005 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 considers that the state has not met its CPA obligations to review and reform legislation regulating podiatrists.

Psychologists Registration Act 1976

Western Australia advised in its 2005 NCP annual report that it expects to introduce a Psychologists Bill 2005 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 yet been implemented, the state has not 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 advised in its 2005 NCP annual report that it intends to introduce an Occupational Therapists Bill 2005 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.

Without a robust public interest case, the Council does not accept the harm minimisation rationale because patients in jurisdictions that do not regulate occupational therapists do not appear to be at an increased risk of harm. 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 (Cwlth) 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 the pending Occupational Therapists Bill 2005, and because the state intends to retain title protection, the Council assesses that Western Australia has failed to meet its CPA clause 5 obligations in relation to occupational therapist legislation.

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 that COAG subsequently endorsed (out of session) in late 2004. Western Australia has already implemented some recommendations of the Galbally report in advance, including:

- 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.

Following the conclusion of interjurisdictional processes in 2004, the Western Australian Government endorsed drafting of the Poisons Amendment Bill to implement the Galbally recommendations. It expects to introduce the amendments to Parliament spring session of 2005.

Western Australia has previously demonstrated a commitment to meeting its CPA obligations by implementing those reforms that could be achieved without COAG's final response. The Council considers that other jurisdictions could also have considered such an approach. However, because the state (like other jurisdictions) has not completed its implementation of the Galbally recommendations, the Council assesses that Western Australia has not met its review and reform obligations in this area.

D Legal services

Legal Practitioners Act 1893

The *Legal Practice Act 2002* implemented many recommendations of the 2002 review of the Legal Practitioners Act. These included creating the capacity to allow incorporated legal practices and multidisciplinary partnerships. Further, the State Administrative Tribunal Act, which commenced on 1 January 2005, removed restrictions on the practice of tribunal related work and implemented changes to prescribe the arbitration services that nonlawyers may undertake. This change is consistent with the review recommendations.

The state also indicated that it will consider (in the context of national reforms) the review recommendation to codify the (then) existing practice of allowing practitioners to opt out of insuring through the Law Society if they can demonstrate to the Law Society that they have secured an appropriate level of professional indemnity insurance through other means. The discretionary power granted to the Law Society has since been shown to be beyond its legal authority. Consequently, the Western Australian Government has prescribed in Regulation all exemptions in relation to public indemnity insurance. While prescriptive, this approach largely maintains the status quo.

Western Australia implemented all recommendations from its NCP review of the legal profession except those being considered in the context of national reforms. While no discernible progress has been made to implement professional indemnity insurance reforms, the capacity of certain legal practitioners to be exempted from 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 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 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, as well as 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 amendments required to implement the review recommendations are yet to be drafted.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

Pawnbrokers and Second-hand Dealers Act 1994

The review of the Pawnbrokers and Second-hand Dealers Act 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. In its 2005 NCP annual report, Western Australia advised that it endorsed the recommendations of the review and prepared amending legislation which, will Cabinet will soon consider for introduction to Parliament.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

Real Estate and Business Agents Act 1978

Western Australia endorsed the review of the Real Estate and Business Agents Act in February 2003. The review recommended:

- retaining licensing to protect consumers against financial loss if 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, along with the requirement for board approval of franchise agreements
- requiring only one director or partner of a licensed partnership or body corporate to be licensed.

Legislation to give effect to the reforms has not yet been passed.

The Council assesses Western Australia as not having complied with its CPA obligations in this area because it did not complete its reforms.

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.

The government endorsed the findings of the national review on 23 June 2003 and the only outstanding element of the national review awaiting implementation is the repeal of the licensing exemption currently awarded to the Crown. A Bill to implement this reform is expected to be available for introduction to Parliament in the spring 2005 session.

The Council assesses that Western Australia has not met its CPA obligations in relation to travel agents legislation because it did not complete its reforms.

Auction Sales Act 1973

The NCP review of the Auction Sales Act in 2001 found that:

- Given the low barriers to entry into the auction industry, the small number of complaints per year and other consumer protection legislation regulating auctioneer conduct, the removal of auctioneer licensing would not significantly increase the number of complaints or decrease the level of consumer confidence concerning auctions.

- The provisions of the Act concerning conduct do not significantly rely on the licensing system for their enforcement or compliance.

- Although the costs of the licensing system (reduced competition, less innovation, higher prices) had been small, the benefits (greater consumer confidence, easier enforcement) could not be demonstrated to outweigh 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 , among other things, alternative mechanisms of regulation (such as negative licensing, registration or certification) to replace the Act's occupational licensing provisions. That general review is now complete. It reassessed the

restrictions that the Act imposes on competition and recommended retaining the existing licensing requirements in the public interest.

Western Australia has provided the Council with a confidential copy of a government position paper that incorporates the findings of both reviews. The Council does not accept the position paper's public interest case (presumably based on the findings of the general review) for retaining licensing in opposition to the recommendation of the NCP review. The Council thus assesses that Western Australia has not met its CPA obligations in relation to legislation regulating auctioneers.

Settlement Agents Act 1981

Western Australia has legislation permitting nonlawyers to undertake certain activities traditionally reserved for legal practitioners, including conveyancing. The NCP 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. The review found that maximum fees can (not will) result in additional costs to both agents and consumers but it also found that the costs are likely to be minor.
- 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. However, in its 2005 NCP reporting, Western Australia has stated that the provisions for setting maximum fees which may be charged by licensed settlement agents will not be repealed. Instead, the state has amended its Regulations to lift the maximum allowable fee charged for settlement services. Other required amendments to the Act are yet to be drafted. Western Australia considered that maximum fees provide protection for consumers from the disadvantages of information asymmetry that arise in settlement transactions and which leave consumers vulnerable to over-charging. In addition, Western Australia noted that many real estate and business agents in Western Australia have a direct financial interest in a settlement agency and will recommend that clients appoint an affiliated settlement agency to complete settlement of a real estate purchase. The convenience that this provides for consumers in what can be a complex and daunting process is a major incentive for them to agree to such an arrangement. In addition, some banks, building societies and other sources of finance operate settlement agencies and consumers may feel

using the financier's settlement agency will increase their chances of obtaining finance. For these reasons, Western Australia considers that market forces will not necessarily operate in consumers' interests.

The Council is not convinced by Western Australia's arguments. The Council notes, for example, that conveyancing charges are unregulated in most other jurisdictions without detriment to consumers and that many lending institutions have an interest in insurance providers without this being seen to endanger the interests of consumers seeking to purchase insurance. For these reasons, and because Western Australia is yet to complete its reforms, the Council assesses it as not having met its CPA obligations in this area.

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.

Hairdressers Registration Act 1946

The Hairdressers Registration Act applies to hairdressers working in the Perth metropolitan area, in the South West Land Division and within an 8-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 NCP assessment, the Council maintained its position. It found that additional information from Western Australia did not demonstrate a net public benefit from the regulation, only that registration leaves consumers in regulated areas no worse off than those in unregulated areas. In the Council's view, consumers are offered adequate protection by the requirement for hairdressers to hold appropriate qualifications (without requiring registration), in conjunction with general health and safety obligations.

Western Australia stated that it does not intend to repeal or amend this legislation. The Council thus maintains its previous assessments that Western Australia has not complied with its CPA obligations in this area.

F1 Compulsory third party motor vehicle and workers compensation insurance

Motor Vehicle (Third Party Insurance) Act 1943

Not assessed (see chapter 9).

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.[5]

- 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 that implements the above change.

The Bill was rejected by the Legislative Council, however, on 19 August 2004. In its 2003 and 2004 NCP assessments, the Council did not consider that the changes announced by the Western Australian Government, retaining restrictions until 2005, constituted an appropriate transitional reform measure underpinned by a public interest case.

In 2005, Western Australia conducted a referendum whether to extend trading hours. In the referendum, voters were asked to assess separately whether the Western Australian community would benefit if general retail trading hours in the Perth metropolitan area were extended to allow trading until 9 pm on weeknights, and for six hours on Sundays. Prior to the referendum, the Western Australian Electoral Commission prepared and published comprehensive arguments supporting the 'Yes' and 'No' cases for the two questions. This information was provided in addition to the debate between proponents of both cases. In the referendum, 58 per cent of voters supported the 'No' case on the issue of extended weeknight trading and 61 per cent of voters supported the 'No' case on the issue of Sunday trading.

The Treasurer of Western Australia subsequently wrote to the Council, advising that Western Australia had decided not to address restrictions in the state's retail trade legislation because the referendum had established the public interest for the restrictions, thereby fulfilling the requirements of CPA clause 5. The letter advised that the Council, to conclude otherwise, would have to assume that it knows more than the public about Western Australia's public interest.

Clause 5 of the CPA obliges governments to review and, where appropriate, reform all existing legislation (at June 1996) that restricts competition. It requires governments to remove restrictions on competition unless they can demonstrate that the restrictions are warranted—that is, that restricting competition benefits the community overall (being in the public interest) and

[5] The Act distinguishes 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.

that the restriction is necessary. The Council has consistently stated that it considers that independent, transparent and objective reviews provide the best opportunity to assess all costs and benefits of restrictions on competition.

The Council is also mindful of COAG's (2000) directive to consider whether review conclusions are within a range of outcomes that could reasonably be reached based on the information available to a 'properly constituted review process'. Any public interest case for competition restrictions thus needs to be supported by relevant evidence and robust analysis. Where a government introduces or retains competition restrictions, and this action was not reasonably drawn from the recommendations of a review, the Council looks for the government to provide a rigorous supporting case, including a demonstration of flaws in the review's analysis and reasoning.

The Council considers that conducting a referendum does not absolve a government from its NCP legislation review obligations. The Council thus retains its previous assessment that Western Australia has not met its CPA clause 5 obligations in relation to the regulation of shop trading hours.

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 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 when it became clear that they would not be passed by the Legislative Council. Instead, Western Australia decided to undertake an independent review of the legislation. In September 2004, the government appointed a review committee, which called for public submissions in October 2004. The Committee has now presented its report, which recommends:

- replacing the needs test with a public interest test. Under the proposed public interest test, applicants would be required to demonstrate that their application is in the interest of the public, having regard to the likely health and social impacts on the community and sub groups within the community.
- allowing liquor stores to trade between 10 am and 10 pm on Sundays. The review was mindful of the important social role played by hotels in small country towns, and recommended that there be provision for local government in small rural towns to conduct a poll on Sunday trading by liquor stores. If the poll does not support Sunday trading, the review recommends that the licensing authority be able to prohibit such trading.

The government is considering the review recommendations.

The Council notes that these recommendations are broadly similar to those of the previous NCP review and appear to be consistent with the NCP. However, because Western Australia has not completed its reform activity, the Council confirms its assessment that Western Australia has not met its CPA clause 5 obligations for liquor licensing.

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)
- the mandate that price boards 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, the variation of price cycles had not materially changed and the duration of price cycles 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.

Since that assessment, Western Australia has provided the Council with material in correspondence and in its NCP annual reports to support its position that the restrictions provide a net benefit to the community. Western Australia's position was outlined in the Council's 2004 NCP assessment.

The Council is confronted with divergent views concerning the public benefits of the restrictions. Assessing the impact of the restrictions is a task of some complexity, and the Council proposed in its 2004 NCP assessment that such an evaluation be undertaken by an independent review, using the considerable evidence available since the legislation was introduced.

In its 2005 NCP annual report, Western Australia indicated that it would consider a review in mid-2005, following an analysis of retail site data by its Department of Consumer and Employment Protection. However, the government has now stated that it has no immediate plans to instigate an independent review of its legislation (Government of Western Australia, 2005b, p. 20). The government considers that it has provided sufficient evidence to address the Council's concerns and to demonstrate the benefits of the legislation.

The Council's position remains unchanged from 2004. It considers that Western Australia is yet to conclusively demonstrate that its petrol pricing restrictions provide a net public benefit, and its concerns were heightened by fines imposed on a retailer in July 2005 for lowering price. Such an outcome does not appear to promote competition and consumer interests. The Council thus confirms its 2004 assessment that Western Australia has not met its CPA clause 5 obligations in this area.

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
- 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
- retaining the Act's remaining restriction on competition, which relates to parties' representation in proceedings before the Retirement Villages Disputes Tribunal.

Fifteen of the 47 review recommendations have been implemented via legislative change, and four were for the retention of the status quo. Western Australia is proposing to draft legislation to enact the remaining recommendations.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because the state did not complete 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. Western Australia intends to draft legislation to enact these reforms but it indicated that it will not finalise its legislative response until it has also assessed the impact of the rapid growth of unlicensed credit providers in the state.

The Council assesses that Western Australia has not met its CPA clause 5 obligations in this area because it has not completed its reforms.

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.

I3 Gambling

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. The government 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 advised that it had 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 expressed reservations about both arguments. There is already easy access to totalisator outlets throughout Western Australia. The 2004 NCP annual report even claimed that 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 maintains its assessment that Western Australia has not 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

The Betting Control Act restricted the business structures of bookmakers and set minimum telephone and Internet bet limits with bookmakers. Western Australia completed a review of the Act and replaced it with new legislation, the *Betting Legislation Amendment Act 2002*. The new Act 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 Council assesses that Western Australia has met its CPA clause 5 obligations in relation to this legislation.

Racing Restrictions Act 1917
Racing Restrictions Act 1927

Western Australia's racing restriction Acts restricted racing to thoroughbred, harness or greyhound racing. Western Australia completed reviews of the two Acts and replaced them with new legislation.

The racing restrictions Acts have been repealed and replaced with the *Racing Restrictions Act 2003*. The new Act allows for non-thoroughbred racing under specified conditions.

The Council assesses that Western Australia has met its CPA clause 5 obligations in relation to this legislation.

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 provisions 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 advised that it would take 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.

In its 2004 NCP assessment, the Council expressed reservations about both arguments. The Council noted that there is already easy access to lottery outlets throughout Western Australia. Western Australia even claimed, 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.

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

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 become the *Gaming and Wagering Commission Act 1987*. A review of the original 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.

In its 2005 NCP annual report, Western Australia advised that it has been unable to reach an acceptable position on the first two recommendations via negotiation with the Burswood Casino. It thus considers these matters to be finalised. The third and fourth recommendations do not require further action on the part of the government.

Progress was made towards amending the Act to licence professional fundraisers. However, during the initial drafting, the government noted that similar provisions were being prepared for inclusion in the Public Collections Bill, which is being drafted.

The latter recommendation (which introduces a new restriction) is the only review recommendation on which the government is yet to act. The Council thus assesses Western Australia as 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

These three 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. It 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. It 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. However, the Bills lapsed when Parliament was prorogued on 25 January 2005. They were introduced into the post-election Parliament Legislative Assembly on 7 April 2005 and received their second reading in the Legislative Assembly on that day. The Bills received their Third Reading on 5 May 2005. They were passed to the Legislative Council on 18 May 2005 where they remain at the Second Reading stage.

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

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. 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.

Western Australia noted in its 2004 NCP annual report that the Productivity Commission is conducting a research study (to be completed in November 2004) into the contribution of national building regulatory reform (under the auspices of the Australian Building Codes Board) 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 stated that it will await the national review of the code before implementing its new building legislation.

In the meantime, the government intends to amend the Local Government (Miscellaneous Provisions) Act to introduce contestable certification services for building approvals. The amending legislation is yet to be introduced to Parliament.

The Council assesses Western Australia as not having met its CPA clause 5 obligations because it did not complete 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 Architects Act 2003 passed both Houses of Parliament on 26 November 2004 and received assent on 8 December 2004. In keeping with the review recommendations, the new Act:

- broadens membership of the Architect's Board to include industry, consumer and educational representatives
- protects title only but does not include restrictions on practice
- restricts the title 'architect' to registered persons only, but permits derivatives that describe a recognised competency (for example, landscape architect or architectural draftsperson)
- requires organisations that offer the services of an architect to have adequate arrangements to ensure an architect supervises, controls and is ultimately responsible for the architectural work provided
- moves registration requirements to the Regulations and refers 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 Act is proposed to be proclaimed to come into operation simultaneously with the gazettal of supporting Regulations. Although the Regulations are still being drafted, Western Australia has assured the Council that the Regulations will not introduce any restrictions contrary to NCP principles and has provided the Council with a summary of their proposed contents.

The Council is thus able to assess Western Australia as having met its CPA clause 5 obligations in relation to architects legislation.

Water legislation

For the 2004 NCP assessment, Western Australia was the only jurisdiction that had significant remaining obligations in relation to the review and reform of water legislation. The outstanding water legislation formed part of the state's 'pool' suspension (NCC 2004, p. xix).

The Western Australian Government reviewed 32 pieces of water industry legislation. The reviews recommended repealing one instrument and reforming 18 others. For the remaining 13 pieces of legislation, the reviews either found no significant competition issues or recommended that no change was required.

At the time of the 2004 NCP assessment, Western Australia reported that it had completed none of the recommended reforms, but was reviewing the Health (Treatment of Sewerage and Disposal of Effluent and Liquid Waste) Regulations 1993 as part of a wider review of health industry legislation. In its 2005 NCP annual report (and in subsequent follow-up discussions with the Council), Western Australia advised that it:

- is not yet able to consider changes (not related to competition issues) in two of the irrigation By-laws (Ord and Carnarvon) as environmental water entitlements, community aspirations and native title issues are not yet settled

- intends to reform seven pieces of outstanding water industry legislation via the Water Legislation Amendment (Competition Policy) Bill 2005—which passed through the Legislative Assembly on 30 June 2005 and is being considered by the Legislative Council. The Country Areas Water Supply (Amendment) By-laws 2005 implementing the review recommendations were tabled in Parliament in May 2005.

- has, in accord with review recommendations, amended the Metropolitan Water Supply, Sewerage and Drainage By-laws 1981 and the Water Agencies (Preston Valley Irrigation Services) By-laws 1969, and repealed the Rights in Water and Irrigation (Construction and Alternation of Wells) Regulations 1963 and the Irrigation (Dunham River) Agreement Act 1968

- has committed to reform the remaining regulatory instruments.

Western Australia completed its review of water industry legislation several years ago, but has implemented only four of the 19 recommended reforms. Consequently, the Council assesses that Western Australia has not met its NCP reform obligations relating to water industry legislation.

Non-priority legislation

Table 14.1 provides details on non-priority legislation for which the Council considers that Western Australia's review and reform activity does not comply with its CPA clause 5 obligations.

Table 14.1: Noncomplying review and reform of Western Australia's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Agricultural Products Act 1929 and Regulations	Restricts sale, movement and destruction of chemically affected produce. Requires analysts to have minimum qualifications.	Not on WA's review schedule but reviewed as part of the national review of agricultural and veterinary chemicals.	Act is to be replaced by the Agricultural Management Bill being drafted. However, the government will replace the Act with Regulations under the proposed Biosecurity and Agriculture Management Bill , currently being drafted.
Artificial Breeding of Stock Act 1965	Restricts premises for supplying semen and other reproductive material. Licenses artificial breeders. Restricts importation of reproductive material.	Review by officials, in conjunction with review of other agricultural protection Acts, completed. Review recommended: • repealing all restrictions • introducing new, less restrictive regulations on the control of diseases • providing for voluntary licensing of artificial breeders.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.
Beekeepers Act 1963	Requires registration of all beekeepers and branding of hives. Restricts importation, antibiotic use and testing. Imposes standards on honey.	Review by officials, in conjunction with review of other agricultural protection Acts, completed. It recommended retaining all restrictions except to reconsider those relating to honey standards and nuisance provisions.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Caravan Parks and Camping Grounds Act 1995	Provides for licensing.	The Caravan Parks and Camping Grounds Advisory Committee, a committee comprising government and industry representatives, considered restrictions in both the Act and associated Regulations. Review found that Regulation 49, which prohibits the issue of a licence for a transit park or a nature based park if a licensed caravan park or camping ground is within 50 kilometres, should be removed. The review also recommended a further review.	Amending legislation is to be drafted. A further review was to be completed by 30 June 2004. Review was endorsed by the Government, which decided to remove Regulation 49. A re-review of section 3(1) is underway.
Cattle Industry Compensation Act 1965	Establishes powers for nominated persons to inspect and destroy cattle for the purposes of disease control. Provides for raising a levy on the sale of cattle.	Review by officials completed in 1998. It recommended: • retaining the restrictions • amending the Act to ensure compensation is paid only for animals destroyed as a result of a control program that is of a 'sufficiently public good nature'.	This legislation was to be repealed when planned legislation for grazing industry health protection funding was drafted during 2003-04. Repeal is now expected this year.
Charitable Collections Act 1946 and Regulations	Provides for licensing.	Review not required.	This Act will be repealed upon enactment of the Public Collections Bill. This Bill was expected to be introduced to Parliament during 2004, but had not yet been introduced at July 2005.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Coal Industry Superannuation Act 1989	Contains restrictions on competition and mandatory contributions.	The Review of the Act was endorsed by government in February 2003. The review found that clause 22, providing government assistance for the Coal Industry Superannuation Fund, should be removed because it restricts competition by conferring a competitive advantage on the fund. The review also considered clauses 14 and 15, setting out mandatory contributions to the fund from members and employers. The review concluded that these restrictions were in the public interest due to economies of scale and reduced administration costs, and should be retained.	The Coal Industry Superannuation Amendment Bill 2005 received its second reading in the Legislative Council in May 2005 after passing the Legislative Assembly. The Bill removes unjustified restrictions on competition.
Consumer Credit (Western Australia) Act 1996	Regulates the provision of consumer credit.	National review completed. The review recommended maintaining the current provisions of the code, reviewing its definitions to bring term sales of land, conditional sales agreements, tiny term contracts and solicitor lending within the scope of the code. The review also recommended enhancing the code's disclosure requirements. The Ministerial Council on Consumer Affairs endorsed the final report in 2002 and referred it to the Uniform Consumer Credit Code Management Committee (UCCCMC), which is facilitating the resolution of some issues.	The Uniform Consumer Credit Code Management Committee is working on implementation of the review's recommendations. Queensland has drafted revised legislation; this legislation will form a template for other jurisdictions. In addition, New South Wales has completed drafting code provisions relating to pre-contractual disclosure which will be incorporated in the template legislation. Reforms are likely to be finalised by the end of 2005.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Cooperative and Provident Societies Act 1903	Provides for licensing.	Act recommended for repeal.	This Act will be repealed upon the enactment of the proposed Co-operatives Bill. The Co-operatives Bill had an AO4 priority for introduction to Parliament in the autumn session 2004. It is now expected to be introduced sometime in 2005.
Fertilisers Act 1977	Requires retailers to clearly label fertilisers and to handle them in such a way as to avoid contamination.	Review completed in 1997. It recommended amending the Act to apply only to those fertilisers that pose a risk to agriculture, and using less restrictive means to achieve the same objectives for other fertilisers. The government endorsed the recommendations of the review in 1997.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.
Health (Asbestos) Regulations 1992	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Health (Cloth Materials) Regulations 1973	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Health (Construction Work) Regulations 1973	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Health (Drugs and Allied Substances) Regulations 1961	Provides for licensing.	Part of Galbally national review. The final Galbally report was given to the Australian Health Ministers' Council (AHMC) in early 2001.	The Australian Health Ministers Advisory Council (AHMAC) established a working party to develop a draft response to the Galbally report for COAG consideration. The working party's draft response, which AHMAC endorsed, was considered by the Primary Industries Ministerial Council before being forwarded to COAG. The AHMAC endorsed the response out of session in October 2003, and COAG was expected to consider the response, together with the Galbally report, in 2004.
Health (Pesticides) Regulations 1956	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (Pet Meat) Regulations 1990		Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (Public Buildings) Regulations 1992	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health (School Dental Therapists) Regulations 1974	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Health Act (Swimming Pools) Regulations 1964	Provides for licensing.	Review under way as part of the review of the Health Act 1911.	Review incomplete.
Hospitals (Licensing and Conduct of Private Psychiatric Hostels) Regulations 1997	Provides for licensing.	The NCP review of the *Hospitals and Health Services Act 1927* includes these Regulations.	Review to commence in 2005-06.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Hospitals (Service Charges) Regulations 1984	Provides for licensing.	The NCP review of the *Hospitals and Health Services Act 1927* includes these Regulations.	Review to commence in 2005-06.
Hospitals and Health Services Act 1927	Controls movement of firms or individuals into or out of the market for private sector health services (e.g. number of private hospital bed numbers at a facility and specifications of buildings). Fees charged for private patients treated in public hospitals are determined by the Governor.	An NCP review of this Act was completed in May 2001 and endorsed by the Expenditure Review Committee and Cabinet in December 2001. In 2005 the government advised that another review of the Act will commence in 2005-06.	

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Mutual Recognition (Western Australia) Act 1995		A national review was completed in 1998. The Productivity Commission completed a research study of the Trans-Tasman Mutual Recognition Agreement (TTMRA) that was released in October 2003. The key finding was that the TTMRA has been effective overall assisting the integration of the Australian and New Zealand economies and promoting competitiveness. A number of special exemptions from the TTMRA that relate primarily to public safety: therapeutic goods, hazardous substances, industrial chemicals and dangerous goods, consumer product safety standards, road vehicle standards, gas appliances standards, electromagnetic compatibility and radiocommunications standards. The Productivity Commission recommended that many of the exemptions should remain, because mutual recognition would erode justified regulatory differences.	In May 2004, COAG and the New Zealand Prime Minister noted 29 of the Productivity Commission's findings and requested further work on the remaining 45 by a cross-jurisdictional Review forum. The forum has completed its report. Western Australia awaits endorsement of that report before implementing any required legislative amendments in line with national arrangements.
Offensive Trades (Fees) Regulations *1976*	Provides for licensing.	Review underway as part of the review of the *Health Act 1911*.	Review incomplete.
Piggeries Regulations 1952		Review underway as part of the review of the *Health Act 1911*.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill , which was scheduled for introduction in 2004.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Plant Pests and Diseases (Eradication) Fund Act 1995	Establishes power of minister to impose levies and ministerial discretion over application of funds.	Review by officials completed in 1997. It recommended amending the Act to ensure levies fund only services that are of a sufficiently public good nature and that have been assessed as in accordance with a benefit–cost method.	The existing legislation is expected to be repealed this year.
Seeds Act 1981 and Regulations		Review completed.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill, which was scheduled for introduction in 2004.
Stock (Identification and Movement) Act 1970	Provides for branding of human food and fibre producing animals. Requires documentation when moving stock.	Review by officials completed. It found some scope for easing restrictions on horse owners.	This legislation will be superseded by a proposed Biosecurity and Agriculture Management Bill, which was scheduled for introduction in 2004.
Street Collections Regulation Act 1940 and Regulations	Provides for licensing.	Review not required.	These Acts will be repealed upon enactment of the Public Collections Bill. This Bill is expected to be introduced to Parliament during 2005.
Suitors Fund Act 1964	Provides for differential treatment of large companies and Crown agencies.	Review completed in 1997. The review noted that all litigants are required to contribute to a fund used to defray legal costs where a court decision is reversed on a 'point of law' appeal or where the proceedings are aborted. However, companies with a paid-up capital of $200 000 or more and Crown agencies are barred from accessing the fund to recover such legal costs. Review recommended removing the bar on companies with paid-up capital of $200 000 or more.	This Act is being subjected to a further review chaired by the Solicitor-General.

(continued)

Table 14.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustees Companies Act 1987	Provides for licensing.	National review is underway. Standing Committee of Attorneys General (SCAG) released an issues paper and draft Bill in June 2001. Finalisation of the review was dependent on advice from the Australian Government as to whether it would provide for the regulation of trustee companies on a national basis via Australian Prudential Regulation Authority services being provided to the states and territories. The Australian Government declined to do so in early 2003. However, at the SCAG meeting in November 2003, the Australian Government minister agreed to reconsider this issue. New South Wales made a final submission to the Australian Government on behalf of states and territories in February 2004. However, in March 2005, the Australian Government declined to undertake the regulation of trustee companies via the Australian Prudential Regulation Authority.	Now that the Australian Government has confirmed that the Australian Prudential Regulation Authority will not undertake the prudential regulation of trustee companies, states and territories are moving to finalise the reform of the legislation based on the draft model, including seeking external advice on the form that prudential standards could take. New South Wales is the leading jurisdiction in this process.