15 South Australia

A1 Agricultural commodities[1]

Barley Marketing Act 1993

The *Barley Marketing Act 1993* prohibited the sale or delivery of barley grown in South Australia to anyone other than the Australian Barley Board. The Act also prohibited competition in the acquisition of oats grown in the state.

In 1997 a review of the Act and Victoria's matching legislation by the Centre for International Economics estimated that the Acts imposed a net cost on the community of $8.5 million per annum. It recommended that the government:

- remove the domestic barley marketing monopoly and the oats marketing monopoly;
- retain the export barley marketing monopoly for only the 'shortest possible transition period';
- restructure the Australian Barley Board as a private grower-owned company.

By mid-1999, the domestic marketing monopoly was removed, the Australian Barley Board was transferred to grower ownership as ABB Grain Limited and the South Australian Parliament amended the Act to sunset the export monopoly over barley from July 2001.

The Parliament subsequently removed the sunset, however, following the release of analysis prepared for ABB Grain Limited by economic forecasters and advisers Econtech. This analysis concluded that the export monopoly benefited the community by $15 million per annum – principally via premium prices on exports of feed barley to Japan. The sunset was replaced by a review after two years.

In Victoria the sunset proceeded and from July 2001 Victorian growers enjoyed competition between traders to acquire their barley as well as the pools that ABB Grain Limited continued to operate.

---

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

The government commissioned a new review of the barley export monopoly in November 2002. The review was conducted by a three-member panel—led by Professor David Round of the University of South Australia, and included a former senior State Government official and the deputy chair of the Grains Council of South Australia—and charged with determining whether the single desk is clearly and credibly in the public interest. In June 2003 the review panel reported that:

> *…it has not demonstrated to the Panel's satisfaction in any convincingly rigorous way that the single desk delivers benefits to the Australian community as a whole that outweighs the costs, and that the objectives of the legislation in granting single desk powers to ABB can only achieved by restricting competition.* (Round et al. 2003, p. 73)

The panel recommended 'controlled deregulation' in which the single desk is exposed to competitive challenge through reform—along the lines of Western Australia's Grain Marketing Act—whereby ABB Grain Ltd would retain a principal barley export licence and, a year after the passage of reform legislation, an independent authority would license barley exports by other marketers that the authority determines do not threaten the price premiums that ABB Grain Ltd achieves as a result of its market power.

In June 2004 the government introduced into Parliament a bill which would deregulate barley exporting in bags and containers while licence bulk exports. The main export licence would be held by ABB Grain Export Limited while other exporters could apply to an authority for special export licences. However this bill lapsed and, notwithstanding some discussions between the government and grower representatives about reform proposals, has not been re-introduced.

The Council assesses that South Australia is still to meet its related CPA clause 5 obligations. South Australia will have met these obligations when it has implemented the recommendations of the 2003 NCP review.

A3 Fisheries

Fisheries Act 1982

The Fisheries Act regulates fishing in South Australian waters via controls on access to fisheries, controls on inputs and, in some cases, controls on output. The major commercial marine species fished in the state are prawns, rock lobster, abalone, whiting, snapper, garfish, yellow-eye mullet, squid and shark.

The 2004 NCP assessment found that South Australia had not met its CPA clause 5 obligations arising from the Fisheries Act because the following competition restrictions even though the 2002 NCP review had not shown them to be in the public interest:

- licence holders in the marine scale fishery or the Lakes and Coorong fishery are prohibited from holding a further licence in these fisheries, or in another fishery, unless they are the registered vessel master
- licences have a term of just one year
- other restrictions exist specific to certain fisheries, such restrictions on quota holdings and transfers, and on numbers of personnel.

The government had earlier removed some restrictions, such as the general prohibitions on the holding of two or more fishery licences and on the corporate ownership of licences (via amending Regulations gazetted in February 2004), and clarified that foreign ownership of fishery licences is permitted, although the Act allows for it to be prohibited.

Following a general review of the Act, the government is preparing replacement legislation which it intends to introduce to Parliament in August 2005. This legislation will align the term of fishery licences to that of the statutory management plan for the respective fishery. It will not, however, address:

- ownership restrictions remaining in the marine scale fishery and the Lakes and Coorong fishery—the government argues that these restrictions help to control fishing effort and support the economic and social health of small coastal communities, but has not satisfied the Council that there are no feasible alternative measures that do not restrict competition
- other restrictions specific to certain fisheries—the government has refused to remove some restrictions (for example, rock lobster pot limits) without industry support for their removal.

Given that the government is still to address these remaining restrictions, the Council assesses that South Australia has not fully met its CPA clause 5 obligations arising from the Fisheries Act.

A5 Agricultural and veterinary chemicals

Agricultural and Veterinary Chemicals (South Australia) Act 1995

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

South Australian legislation is the Agricultural and Veterinary Chemicals (South Australia) Act.

The Australian Government Acts were subject to a national review (see chapter 19). The national processes established to implement the legislative reforms arising from the review have yet to complete their work. While South Australia initially thought that changes to the Agricultural and Veterinary Chemicals (South Australia) Act would be required as a result of changes in the Australian Government Acts, the Legal Unit of the Australian Pesticides and Veterinary Medicines Authority advised the state that no changes to South Australia's legislation are expected or required. South Australia, therefore, considers that its legislation is NCP compliant.

The Council accepts that South Australia may not require further legislative reforms in this area; other jurisdictions may be in a similar situation. However, as the Council has noted, because the Australian Government has not finalised legislation to revise the national Agricultural and Veterinary Chemicals Code, reform of state and territory legislation that automatically adopts the national code has not been completed. The Council, therefore, must assess that South Australia has not met its CPA obligations in relation to this legislation.

A9 Mining

Opal Mining Act 1995

The Opal Mining Act prohibits corporations from entering an area of the Coober Pedy precious stones field known as the Major Working Area to prospect or mine (s13 of the Act). The 2002 NCP review of the Act recommended the removal of this restriction. The government is preparing an amendment to remove the restriction, which it expects to be in force by December 2005.

The Council assesses that South Australia has not met its CPA obligations in relation to the Opal Mining Act because the government is still to complete its reform.

B1 Taxis and hire cars

Passenger Transport Act 1994

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

This finding was based on the government having used its discretion to release no licences between the 1999 review and mid-2002: the number of general taxi licences has remained at 920 since 2001.[2] In 2005, the South Australian Government (for the first time) challenged the view that licence numbers have remained static since 2001. It stated that 15 general licences with conditions related to the provision of disability accessible taxi services were offered in 2001 but only three were taken up, which could be taken as evidence of a saturation point in the taxi market. The Council recognises the importance of ensuring that people with disabilities have access to taxi services. However, failure to take up such licences is not necessarily indicative of saturation in the taxi market. For example, the capital costs of wheelchair accessible taxis and the associated conditions mean that this form of licence tends to be less in demand than unrestricted licences. (A similar situation arises in New South Wales were the former unrestricted licences are traded at very high prices, whereas licences currently on offer, although not subject to any quantity restriction, are not favoured by the market because of the more restrictive provisions attached.)

This stagnation in numbers has been accompanied by an increase in the average value of taxi plates from $137 000 in the first half of 2003 to around $162 000 in 2004. Licence transfers in early 2005 were in the range $165 000 to $195 000 (Government of South Australia 2005, p. 75).

There has been free entry to the hire car market since 1991, and although hire cars cannot use ranks or respond to hails, they have made a significant contribution to the overall supply of chauffeured passenger transport services. In its 2005 NCP annual report, the South Australian Government submitted that 'given unrestricted numbers, hire cars provide a well established alternative source of transport competing directly with taxis for pre-booked transport services' (Government of South Australia 2005, p. 24). The government estimated that the pre-booked market had represented 80 per cent of the taxi business before the development of hire car services, but it now represents around 55 per cent. It considers, therefore, that hire cars can service any demand in the pre-booked market that is unmet by the taxi industry. It thus contends that the impact of taxi licence restrictions is relevant only for rank and hail services.

The government has committed to review the industry before the next election in 2006. It is current government policy to maintain a freeze on the issue of any new taxi licences. This freeze is predicated on concerns about low driver remuneration; other reviews, however, have highlighted the direct link between the impact of plate values on lease rates and thus low driver remuneration. The pending review will not be a NCP review, although the government's 2005 NCP annual report notes that the review 'will form an open and transparent evaluation of existing services and future demand' (Government of South Australia 2005, p. 24). The terms of reference are expected to include an assessment of the need for additional taxi licences,

2 There are also 70 wheelchair accessible licences and 57 standby licences.

benefits to the public, competition for taxis from other passenger modes, and the roles of different licence categories.

The Council accepts that the de-restriction of hire cars has reduced the impact of restrictions on taxi releases. However, hire cars are not fully substitutable with taxis, and the Council has no independent evidence to conclude that the market is competitive. In 2005, the South Australian Government cited recent studies that indicated that patronage for taxi services had declined and that 'in relation to ply for hire (rank and hail taxi services) observations indicate that on average taxi drivers wait longer for passengers than passengers for taxis'. The Council notes that this observation is not particularly compelling as it can be translated to most competitively provided services (ie service providers wait longer for customers than vice versa.)

To demonstrate compliance with its CPA obligations, South Australia must undertake an independent review of its taxi and hire car legislation that tests all remaining restrictions on competition against the CPA clause 5 guiding principle. And, where appropriate, it must reform the legislation.

The Council assesses that South Australia has not met its CPA obligations in relation to its taxi legislation.

B2 Tow trucks

Motor Vehicles Act 1959

South Australia completed a review of the accident towing provisions in the Motor Vehicles Act and the Accident Towing Roster Scheme Regulations in 2000. The government released the review report for public comment in November 2003.

The report is concerned with the Adelaide metropolitan area, which is divided into zones for the purposes of the accident towing industry. The Accident Towing Roster Review Committee determines the zones and the number of roster positions in each zone. The South Australian police allocate tow trucks to accident scenes according to the next available roster position for each zone. The review report found that the roster system allows for quick and orderly removal of damaged vehicles from roads without undesirable behaviour by tow truck operators, and that these benefits are of significant value to the community. However, the review panel was concerned that the committee controls which companies occupy roster positions. It argued that 'there is no justification in terms of the competition principles for restricting entry to operators who meet the criteria for issue of a position, nor is there a justification for the retention of the zoning system simply as a means of sharing the available business' (Transport SA 2000, p. 15). The report recommended that there be no limitations on the number of operators who can apply to participate in the roster for a specific zone.

The government released its response to the NCP review in July 2004, indicating that it will accept the recommendation to remove limits on the number of operators who can participate in the accident towing roster for a particular zone. In August 2004, South Australian officials informed the Council that amendments to Regulations will be made by the end of 2004. The amendments were anticipated to:

- retain the roster system but remove the Accident Towing Roster Review Committee's control of which companies appear on the roster
- provide for any tow truck company to be on zone rosters subject to it meeting quality and probity requirements
- abolish the Accident Towing Roster Review Committee.

South Australia's 2005 NCP annual report stated that Regulations to implement the government response have been developed and discussed with towing industry associations. Following these discussions, the government is investigating suggested modifications to the scheme, and this process is delaying the finalisation and implementation of the Regulations.

Given this delay, the Council assesses that South Australia has not met its CPA obligations in relation to its tow trucks legislation.

C1 Health professions

Chiropractors Act 1991 (chiropractors and osteopaths)

The South Australian review of the Chiropractors Act recommended removing ownership restrictions and amending practice reservations and the advertising code. In the 2003 NCP assessment, the Council assessed that South Australia had yet to address these matters (notwithstanding that the review recommendations satisfactorily addressed the competition concerns) so had not yet met its CPA clause 5 obligations in relation to chiropractors. At that time, South Australia advised that Cabinet had approved the drafting of a Bill to implement these recommendations and, after consultation with stakeholders, that approval would be sought to introduce the Bill to Parliament in the second half of 2003. At the time of the 2004 NCP assessment, a Bill had not been introduced, but a draft Chiropractors and Osteopath Practice Bill 2004 was available for public comment. The House of Assembly passed the Bill on 11 April 2005, which received assent on 15 July 2005 and was proclaimed on 4 August.

The new Act implements the recommendations of the NCP review. Among other things it establishes a single board for both chiropractors and osteopaths. This is in line with recommendations of the review, which concluded that it was not practical to enact separate legislation for osteopaths because of a very small number registered in South Australia (there are 10

registered osteopaths and another 46 people practising as both chiropractor and osteopath). The Act does, however, recognise osteopaths as a profession distinct from chiropractors, and it provides separate definitions of chiropractic and osteopathy and establishes separate registers for each profession. Provisions in the Act also require students undertaking training in chiropractic or osteopathy to register with the board prior to undertaking any clinical work in the state. This provision ensures that all people practising in the field in South Australia are subject to the same professional standards and codes of conduct.

South Australia has met its CPA clause 5 obligations in relation to chiropractors and osteopaths.

Dentists Act 1984
Dental Practice Act 2001

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

The ownership restrictions are subject to a power for the governor to grant exemptions by proclamation. The state noted in its 2004 and 2005 NCP annual reports that the governor had granted exemptions for all applications processed. The government published approvals in the South Australian *Government Gazette*.

South Australia has advised that it consulted with stakeholders on a proposed amendment to the Dental Practice Act 2001 to remove ownership restrictions, consistent with the amended *Medical Practice Act 2004*. Approval to table an amending Bill will be sought from Cabinet in October 2005.

Given that reforms to dental practitioner legislation are incomplete, the Council assesses that South Australia has not met its CPA obligations in this area. However, the current exemption provisions mean that the ownership restrictions are unlikely to impose significant costs on the community.

Medical Practitioners Act 1983

South Australia's 1999 review of the Medical Practitioners Act recommended removing ownership restrictions. The former government introduced amending legislation in May 2001 to implement the review's recommendations, but the Bill lapsed following the state elections. The current government introduced a new Bill to Parliament in 2004. The Medical

Practice Act 2004 received assent on 16 December 2004 and has been proclaimed. The Act removes existing ownership restrictions and includes provisions to protect the public (a code of practice, for example) without restricting entry into the market. In short it implements the key recommendations of the NCP review.

South Australia has met its CPA clause 5 obligations in relation to this profession.

Optometrists Act 1920

South Australia's review of optometry regulation recommended removing restrictions on training providers and introducing a code of conduct. It also recommended that optometrists legislation be extended to cover optical dispensers. The Council's 2003 NCP assessment considered that the review recommendations appeared consistent with the state's CPA obligations. By the time of the 2004 NCP assessment, however, South Australia had not implemented the reforms. In its 2005 NCP annual report, South Australia advised that consultation on a draft Bill has been completed and the issue is before the Minister for Health. In September 2005 South Australia advised that the government expects to table the Optometry Practice Bill during the current parliamentary session as soon as it resolves matters arising from the public consultation.

Given that the reforms have not been implemented, South Australia has not met its CPA clause 5 obligations in relation to the optometry profession.

Pharmacy Act 1991

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

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

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

- increase the number of pharmacies that a pharmacist can own from four to five

- allow new friendly societies to enter the South Australian market, with a maximum number of six for each society
- increase the number of pharmacies that National Pharmacies may own from 31 to 40.

South Australia is consulting with stakeholders on this reform proposal. These reforms, if implemented, will improve competition in the pharmacy industry by removing restrictions on new friendly society entrants and by increasing the number of pharmacies that both pharmacists and friendly societies can own.

However, these proposed reforms fall short of those required by COAG national review processes because COAG outcomes require the removal of restrictions on the number of pharmacies that a pharmacist can own.

South Australia has not implemented, and does not intend to implement pharmacy regulation reforms consistent with COAG requirements. Consequently, it has failed to meet its CPA obligations in relation to the pharmacy profession.

Physiotherapists Act 1991

South Australia completed a review of the Physiotherapists Act in February 1999. In relation to the NCP, the review recommended that the government replace broad practice restrictions with core practice restrictions, and remove ownership restrictions. The *Physiotherapy Practice Act 2005* implements the review recommendations. The new Act follows the template of the Medical Practice Act and complies with CPA obligations.

South Australia has met its CPA clause 5 obligations in relation to this legislation.

Chiropodists Act 1950

The recommendations of the 1999 review of South Australia's Chiropodists Act include limiting practice reservation and removing ownership restrictions. Both houses of the South Australian Parliament passed the Podiatry Practice Bill 2004 on 11 April 2005. South Australia has since advised that the Act has been proclaimed. The Act implements the recommendations of the 1999 review.

South Australia has met its CPA clause 5 obligations in relation to this legislation.

Psychological Practices Act 1973

South Australia completed its NCP review of the Psychological Practices Act in 1999. It recommended removing advertising and practice restrictions. South Australia is consulting with stakeholders on a draft Bill and expects to seek Cabinet endorsement to table the Bill in October 2005.

South Australia has not met its CPA clause 5 obligations in relation to this legislation because it has not yet implemented the reforms.

Occupational Therapists Act 1974

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

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

Without a robust public interest case, however, the Council does not accept the above arguments because there does not appear to be an increased risk of harm to patients in jurisdictions that do not regulate occupational therapists. To protect patients, New South Wales, Victoria, Tasmania and the ACT rely on self-regulation supplemented by general mechanisms such as common law, the *Trade Practices Act 1974* and independent health complaints bodies. The Council notes too that the South Australian Parliament has passed the Health and Community Services Complaints Bill 2004, which will provide the state with an independent body to which complaints can be made about occupational therapists. While the Council accepts that the Complaints Commissioner under the Act cannot discipline a practitioner, it notes that the commissioner can conciliate disputes and thereby contribute to addressing consumer concerns.

In addition, many occupational therapists are employed in the public sector which can easily assess the capabilities of its staff. Further, consumers are unlikely to seek occupational therapy services without a referral from another health provider. Both these factors reduce information asymmetry risks for the consumer. In the 2003 NCP assessment, therefore, the Council assessed

that South Australia's proposed legislative changes, which include retaining title protection, would not comply with its CPA obligations.

Given that South Australia has tabled the Occupational Therapy Practices Bill 2005, which retains title restriction, the Council reconfirms that the state will not meet its CPA obligations when it amends its occupational therapists legislation. While the Council considers that title protection restricts competition, it notes that the costs of retaining the restriction are not significant because nonregistrants can still use unrestricted titles.

C2 Drugs, poisons and controlled substances

Controlled Substances Act 1984

Following the outcome of the Galbally review (see chapter 19), the Australian Health Ministers Council endorsed a proposed response to the review's recommendations that COAG has now endorsed. The proposed response provides for each jurisdiction's implementation of the recommendations over a 12-month period from July 2005, the date of CoAG's endorsement.

South Australia has previously advised of its intention to implement the review recommendations following their endorsement by CoAG. One recommendation—the removal of manufacturer and wholesaler licensing for S5 and S6 poisons—is to be progressed by amending the Regulations during 2005.

The Council acknowledges that implementation of the Galbally reforms is imminent. However, because the reforms are still outstanding, the Council assesses that South Australia did not meet its CPA obligations in this area.

D Legal services

Legal Practitioners Act 1981

The South Australian Government passed the *Legal Practitioners (Miscellaneous) Amendment Act 2003*, which implemented the recommendations from its NCP review of the legal profession, except for permitting multidisciplinary practices. South Australia has examined this issue, including potential ethical impacts, as part of the national model law processes (see chapter 19). It signed a memorandum of understanding among all Australian Attorneys-General, agreeing to adopt the model laws. However, South Australia has not committed to adopt provisions for multidisciplinary practices and incorporated legal practices, because it is concerned that professional ethical obligations cannot be adequately protected in these structures.

Existing restrictions on professional indemnity insurance are also being considered in the context of the national model law processes.

South Australia has failed to meet its CPA obligations in relation to the legal profession because it is not adopting the national model provisions for multidisciplinary practices and incorporated legal practices. and because it is yet to remove restrictions on professional indemnity insurance.

E Other professions

Travel Agents Act 1986

Governments are taking a national approach to reviewing their travel agent legislation. The Ministerial Council on Consumer Affairs commissioned the Centre for International Economics, overseen by a ministerial council working party, to review legislation regulating travel agents. The Ministerial Council for Consumer Affairs endorsed the review recommendations. It resolved to defer implementation of a recommended review of the Travel Compensation Fund pending completion of a joint industry working group review of the fund in light of the effects of the Ansett collapse. The remaining recommendations were:

- review the qualification requirements for travel agents and make these uniform throughout Australia
- increase to $50 000 the turnover threshold amount under which persons are exempt from the licensing requirement
- remove the exemption for Crown owned businesses.

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

South Australia's Commissioner for Consumer Affairs implemented the agreed uniform qualification by minute dated 14 September 2004. (The commissioner was able to do this without legislative change because the qualification provisions of the Act state that the required qualifications are those prescribed by regulation or approved by the Commissioner.) South Australia approved the recommended increase in the exemption threshold level, and Regulations to implement this change came into operation on 1 June 2004. It has decided not to remove the Crown exemption for the South Australian Tourism Commission because the commission does not engage in competitive commercial activity.

The Council thus assesses that South Australia has met its CPA obligations in relation to travel agents legislation.

Employment Agents Registration Act 1993

The review of this Act, completed in 2002, regarded no issues raised as high impact in terms of competition in this industry. Eleven issues were assessed as having a competition impact. The impact was assessed as trivial in nine cases and trivial to intermediate in the following two cases:

- Section 6 prohibits a person from carrying on business as an employment agent, or holding themselves out as an employment agent, unless licensed.
- Section 21 of the Act regulates an employment agent's conduct towards an employer seeking an employee, particularly in relation to how and when an agent can obtain payment from an employer.

The review recommended that:

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

The government is consulting with the industry to identify the optimal method of addressing these concerns and achieving an approach that is consistent with that of other jurisdictions. This approach may include a code of practice and a reduced level of legislation. South Australia anticipates that this matter will be resolved by the end of 2005.

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

Hairdressers Act 1988

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

The 2001 NCP assessment reported that South Australia had met its CPA obligations in relation to legislation regulating hairdressers, because the then government had endorsed the review recommendations and passed the recommended legislative amendments. South Australia has recently examined its regulatory arrangements. It found its entry requirement (completion of components of the National Hairdressing Training Package) to be less onerous than the qualification (apprenticeship completion) sought by the majority of hairdressing salons. Once hairdressers have entered the industry they are subject to a negative licensing scheme that has generated a relatively low number of complaints in recent years. South Australia thus considers that its remaining restrictions provide a net public benefit and are not in need of further change.

The Council accepts South Australia's position and assesses it as having met its CPA obligations in relation to hairdressers.

F1 Compulsory third party motor vehicle and workers' compensation insurance

Motor Vehicles Act 1959

Workers Rehabilitation and Compensation Act 1986

Not assessed (see chapter 9).

G1 Shop trading hours

Shop Trading Hours Act 1977

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

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

In its 2003 and 2004 NCP assessments, the Council noted that South Australia had implemented significant reforms, but that some discrimination against larger retailers remained. Unlike their smaller, specialist competitors, larger general retailers cannot open after 9 pm on weekdays,

6 pm on Saturdays or 5 pm on Sundays. Although the government did not provide a public interest case to support these restrictions, it indicated that it intended to review the Act after it has been in operation for three years.

In its 2005 NCP annual report, South Australia maintained that the impact of the remaining restrictions is minimal. It considers that the legislation imposes a very low level of constraint for some types of retailer (such as furniture, hardware, floor covering and motor vehicle parts and accessories stores) and that other retailers can trade on all days of the year except Christmas Day and Good Friday.

South Australia also drew the Council's attention to the provisions of the Act that allow any retailer to seek exemption for specific periods. The minister approved widespread exemptions during the pre- and post-Christmas period from November 2004. However, since the amendments came into effect in 2003, few retailers have sought exemptions for other periods. South Australia considered that this suggests these are times when low volume sales do not justify opening for trade.

In addition, retailers located within close proximity (for example, in a tourist precinct) may seek exemption for their area. South Australia noted that only a few of the more prominent regions, such as Port Lincoln, have sought exemption, and considered that this also suggests extended periods of trading may not be profitable for many retailers.

South Australia concluded that its remaining restrictions have minimal impact. The Council accepts that the government's reforms mean the cost of the remaining restrictions is relatively small compared with the situation before July 2003. However, the CPA obliges jurisdictions to demonstrate that restrictions on competition provide a net public benefit and, where this cannot be established, to remove those restrictions. This obligation is not fulfilled by indicating that the restrictions have little impact. Indeed, if the restrictions have little impact, there is no reason to delay their removal.

Accordingly, the Council retains its 2004 NCP assessment that South Australia has not complied with its CPA clause 5 obligations in this area.

G2 Liquor licensing

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

South Australia completed its NCP review of the 1985 Act in 1996 and removed a number of restrictions in 1997. It retained, however, a needs test (whereby the licensing authority can reject a licence application if it considers that existing sellers cater for the needs of the public in the relevant locality)

and the requirement that packaged liquor be sold only from premises exclusively devoted to the sale of liquor. The review recommended retaining these provisions and conducting a further review after three or four years, when evidence of outcomes in less regulated jurisdictions would be available. In the 2003 NCP assessment, the Council assessed the exclusive premises requirement as complying with CPA obligations.

A further review that considered the needs test published a draft report in April 2003. It described the needs test as a serious competition restriction that public benefits cannot justify and recommended its abolition. In 2004, the government advised that it was considering the report's recommendation—in particular, whether the needs test could be replaced by a public interest test as has occurred in some other jurisdictions. The government is continuing to hold discussions with stakeholders about this and other reform alternatives, but is yet to amend the Act. The Minister requested the Liquor and Gambling Commissioner to establish a working party to examine the various reform options, with a view to either a consensus recommendation or a clear agreement on the options to be considered. Representation on this working party has been finalised and it is expected to report around the end of December 2005

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

G3 Petrol retailing

Petrol Products Regulation Act 1995

South Australia's Petrol Products Regulation Act allows new retail petroleum licences to be withheld if the new licence holder would provide 'unfair and unreasonable competition' to sellers in the area immediately surrounding the proposed new outlet. The Petroleum Products Retail Outlets Board administers the licensing system. South Australia completed a review of the Act in 2001, finding that the Act created a barrier to entry and protected industry participants without providing a net public benefit.

The government accepted the findings of the review and reported in 2003 that it was drafting legislation giving effect to the recommendations, principally the abolition of the board. It proposed phasing out the restrictions to provide industry participants with time to adjust their business plans to account for the changes. The legislation is now expected to be introduced in the second half of 2005.

The Council has accepted the need for a phased reform, but notes that South Australia, four years after the review, is still to pass legislation to effect the foreshadowed reforms. It thus retains its 2004 NCP assessment that South

Australia has not complied with its CPA obligations in relation to petrol retailing.

H3 Trade measurement legislation

Trade Measurement Act 1993
Trade Measurement Administration Act 1993

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

Because the national review and reform of trade measurement legislation has not been completed, the states and territories involved (including South Australia) have yet to meet their CPA obligations in relation to their trade measurement Acts.

South Australia conducted an internal review of its Trade Measurement Administration Act which concluded that the Act does not contain any restrictions on competition because it merely provides for the administration of the Trade Measurement Act.

The Council thus assesses that South Australia has met its CPA clause 5 obligations in relation to the Trade Measurement Administration Act.

I2 Gambling

State Lotteries Act 1966

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

In its 2003 and 2004 NCP assessments, the Council assessed South Australia as not having met its CPA obligations in relation to lotteries legislation because the government's public benefit arguments do not support

indefinitely retaining effective exclusivity for the Lotteries Commission. (A summary of the review's findings and the Council's views can be found in chapter 9 of the 2003 NCP assessment.) South Australia continues to maintain its support for the review's findings, but has undertaken to monitor reviews of, and developments in, lottery licensing in other jurisdictions.

There have been no further developments, so the Council maintains its previous assessment that South Australia has not met its CPA obligations in this area.

Gaming Machines Act 1992

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

The review found that:

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

The Council has previously accepted the government's view that the State Supply Board's role as the single *supplier* of machines has public benefits. In its 2004 assessment, the Council noted, however, that South Australia had not addressed the review findings concerning (1) transferability of the right to operate machines and (2) the State Supply Board's monopoly on *service* provision, and thus assessed South Australia as not having complied with its CPA obligations in relation to gaming machines.

South Australia has now addressed these issues with the passage of the Gaming Machines (Miscellaneous) Amendment Act 2004 in December 2004. With respect to the gaming machine service licence, the Act removes the exclusive licence arrangement and provides for the Liquor and Gambling Commissioner to issue licences to applicants who meet appropriate probity and skills criteria. The latter provision is to commence operation once the existing service agent contracts held by the State Supply Board expire on 1 July 2006.

The 2004 Act also provides for trading in the right to operate gaming machines. The details of the trading scheme are established in the Gaming Machines Regulations 2005 and the first round of trading took place in May 2005.

Because South Australia has completed its reforms, the Council assesses it as having complied with its CPA obligations in relation to gaming machines.

J3 Building occupations

Architects Act 1939

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

The South Australian Government had not introduced a Bill to amend the Architects Act to reflect the agreed national framework at the time of the 2003 NCP assessment, and the Council found that review and reform activity was incomplete. The minister responsible for the legislation is meeting with stakeholders in August 2005 and expects to decide on the future of the Act following this meeting.

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

Non-priority legislation

Table 15.1 provides details on non-priority legislation for which the Council considers that South Australia's review and reform activity does not comply with its CPA clause 5 obligations.

Table 15.1: Noncomplying review and reform of South Australia's non-priority legislation

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Citrus Industry Act 1991	Restricts market conduct.	NCP review completed in 2001. The review recommended repeal of the Act and that public benefit functions be undertaken by an industry association funded under the Primary Industries Funding Schemes Act 1998.	A draft Bill to provide for the removal of anticompetitive elements of the Citrus Act by 30th June 2005 was taken through a community consultation process in early 2004. The industry requested that total deregulation not occur immediately, and that some form of citrus industry legislation be retained. Subsequently a further round of drafting of new citrus industry legislation has been undertaken. The Citrus Industry Bill 2005 and Regulations provide for the removal of all marketing elements while retaining citrus industry development and food safety functions. Amendments to the Act have now been passed by Parliament and the accompanying regulations are expected to be proclaimed by the end of October 2005.
Consumer Credit (South Australia) Act 1995	Regulation of 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, 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 which 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 15.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Discharged Soldiers Settlement Act 1934	Restricts market conduct.	Review completed in 1999, recommending repeal of the legislation.	Cabinet approved the repeal of the Act on 20 January 2003. A repeal Bill is expected to be introduced to Parliament in September 2005.
Occupational Health Safety and Welfare Act 1986	Restricts market competition.	A legislative review was completed in 2002 and an NCP review was subsequently conducted. The NCP review found that the benefits of the existing system outweigh the costs of the restriction on competition and should be retained. The review raised concerns relating to market entry for health and safety representatives (given of accreditation processes) and in relation to public access to Australian Standards.	The proposed SafeWorkSA Authority will consider the issues raised by the review. If the authority is not established, the matters will be dealt with by the existing ministerial Occupational Health, Safety and Welfare Advisory Committee. The Occupational Health, Safety and Welfare (SafeWorkSA) Amendment Bill 2003 was before Parliament in autumn 2005, when the government expected it to be passed.
South Australian Health Commission Act 1976	Sets barrier to market entry and restricts market conduct of private hospitals.	Review completed in 1999. Final review report awaiting the outcome of the Health Complaints Bill introduced to Parliament in March 2001, then lapsed. The Health and Community Services Complaints Bill was introduced into Parliament in July 2002.	Amendments to the Act relating to non-NCP and NCP issues are being considered as part of the health reform process arising from the generational health review.

(continued)

Table 15.1 continued

Legislation (name)	*Key restrictions*	*Review activity*	*Reform activity*
Trustee Companies Act 1988	Regulates trustee companies.	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.